International Union of Operating Engineers, Local 150, AFL–CIO *and* Donegal Services, LLC *and* Ross Builders, Inc. Cases 13–CP–227526, 13–CC–227527, 13–CC–231597, and 13–CC–233109

September 28, 2021

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS KAPLAN AND RING

On December 13, 2019, Administrative Law Judge Kimberly Sorg-Graves issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and Charging Parties filed answering briefs. The Charging Parties filed exceptions and a supporting brief, and the Respondent filed an answering brief. The General Counsel filed exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[2] findings,[3] and conclusions[4]

[1] The Acting General Counsel subsequently filed a motion seeking to withdraw the General Counsel's exceptions. With this decision on the merits, the Acting General Counsel's motion is moot.

Additionally, the Respondent filed a motion for leave to submit supplemental authority, requesting that the Board consider *Ohr v. Operating Engineers Local 150*, No. 18 C 8414, 2020 WL 1639987 (N.D. Ill. Apr. 2, 2020), in which the district court denied the Regional Director's petition for interim injunctive relief under Sec. 10(l) of the National Labor Relations Act (the Act). And the Charging Parties filed a related motion for leave to file supplemental authority, requesting that the Board consider *Donegal Services, LLC v. Operating Engineers Local 150*, No. 20 C 1990, 2020 WL 5994464 (N.D. Ill. Oct. 8, 2020), in which the district court denied Local 150's motion to dismiss Donegal Services' claim for damages from Local 150 under Sec. 303 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 187. The Board granted both motions and thus has accepted the parties' submissions. Concerning the Respondent's submission, it has long been "familiar doctrine that a court's finding in a 10(l) proceeding is not binding upon the Board when the case is presented to the Board on the merits." *Chefs, Cooks, Pastry Cooks & Assistants, Local 89*, 135 NLRB 1173, 1176 (1962); see also *Walsh v. Longshoremen's Local 799*, 630 F.2d 864, 868 (1st Cir. 1980) ("[A] section 10(l) decision is not a final decision on the merits of the underlying unfair labor practice charge, and it does not bar further litigation of the issues involved in that charge, either before the Board, or in an enforcement proceeding in the court of appeals.") (citing *NLRB v. Denver Building & Construction Council*, 341 U.S. 675, 681–683 (1951)). Concerning the Charging Parties' submission, the Charging Parties note that in denying Local 150's motion to dismiss Donegal Services' claim for damages, the court rejected Local 150's defense that *Ohr*, above, was binding on Donegal Services and, thus, a ground for dismissal. In doing so, the court held that Local 150 waived that defense by failing to develop any arguments to support it. The Charging Parties ask that the Board take notice of the court's holding when determining whether the Respondent violated Section 8(b)(4) of the Act. That holding, however, is not germane to our disposition of this case. The court ruled on a procedural matter (waiver), not on the merits of the unfair labor practice allegations before us.

[2] The Charging Parties have excepted to the judge's exclusion of evidence they proffered to show that Respondent agents violated traffic laws or otherwise behaved unsafely while picketing Charging Party Donegal Services, LLC (Donegal). We agree with the judge that the proffered evidence was properly excluded because it was not relevant to the violations alleged by the General Counsel.

[3] The Charging Parties have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. Because, as noted below, no party excepts to the judge's finding that the Respondent picketed Donegal with a proscribed object, the Charging Parties' exceptions relating to testimony bearing on the Respondent's motive for that picketing are, in any case, moot.

[4] In the absence of exceptions, we affirm the judge's conclusion that the Respondent violated Sec. 8(b)(7)(C) of the Act by picketing Donegal with an object of forcing or requiring Donegal to recognize or bargain with the Respondent as the representative of Donegal's employees or forcing or requiring those employees to accept or select the Respondent as their collective-bargaining representative, at a time that the Respondent was not certified as such representative, and where the picketing was conducted without a petition being filed under Sec. 9(c) of the Act within a reasonable period of time not to exceed 30 days from the start of picketing. In doing so, we do not rely on language in the judge's decision that could be read to suggest that Sec. 8(b)(7) requires a separate showing of "restraint or coercion." Nor do we rely on the judge's citation to *Preferred Building Services*, in which the Board addressed a question arising under Sec. 8(b)(4) without passing on a related Sec. 8(b)(7) question. 366 NLRB No. 159, slip op. at 1 fn. 3 (2018), review granted and remanded sub nom. *Service Employees Local 87 v. NLRB*, 995 F.3d 1032 (9th Cir. 2021).

In addition, the former General Counsel argued that the Board should overrule *Carpenters Local 1506* (*Eliason & Knuth of Arizona*), 355 NLRB 797 (2010), and *Sheet Metal Workers Local 15* (*Brandon Regional Medical Center*), 356 NLRB 1290 (2011), relied on by the judge. We decline to do so, and we affirm the judge's findings that the Respondent did not violate Sec. 8(b)(4)(i) or (ii)(B) by displaying stationary banners and inflatable rats at the following Illinois locations: Elmhurst-Chicago Stone's batch plant in Elmhurst; Andy's Frozen Custard stores in Bolingbrook, Oak Lawn, Naperville, and Countryside; Greenscape Homes' office in Warrenville; Provencal Construction's office in Burr Ridge, Overstreet Builders' office in Naperville, or Ross Builders' office in Hinsdale. See *Operating Engineers Local 150 (Lippert Components)*, 371 NLRB No. 8 (2021). In doing so, Members Kaplan and Ring rely on the principles articulated in their concurrence in *Lippert*. See id., slip op. at 3–7. As fully explained there, Congress enacted Sec. 8(b)(4) to protect neutral employers from being enmeshed in labor disputes not their own, and Members Kaplan and Ring are committed to the vigorous enforcement of that statutory provision, within the limits set by Congress as interpreted by the Supreme Court. In *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council*, 485 U.S. 568 (1988), the Supreme Court made clear that where secondary union activity seeks to achieve its

only to the extent consistent with this Decision and Order.[5]

The judge found that the Respondent violated Section 8(b)(4)(i) and (ii)(B) by exhibiting stationary banners and inflatable rats at two neutral facilities on the basis that those displays occurred in proximity to where the Respondent also picketed Donegal in connection with a primary labor dispute. The judge reasoned that, while the Respondent's primary picketing of Donegal at these facilities did not itself violate Section 8(b)(4), the proximity of the picketing rendered the secondary displays unlawfully coercive towards potential patrons of the two neutral businesses. At one of these businesses (Boughton Materials), the judge also found that the Respondent violated Section 8(b)(4)(ii)(B) by later threatening to resume prior picketing, because she found that the threatened conduct reasonably encompassed the secondary displays that she had previously found unlawful. At the other business (Elmhurst-Chicago Stone's landfill in Bolingbrook), the judge additionally found that the displays violated Section 8(b)(7)(C) because of their association with picketing that—based on its objects and timing—separately violated that section. We reverse each of these findings for the reasons explained below.

I.

As set forth more fully in the judge's decision, Donegal performs construction excavation and hauling work in the Chicago area. In December 2017, after Donegal owner Simon Bradley declined to voluntarily join an existing multi-employer collective-bargaining agreement with the Respondent, the Respondent sought to organize Donegal's employees, including by enlisting union-supporting employees to provide information to the Respondent about Donegal's operations.

On July 9, 2018,[6] Donegal fired an employee who had been providing information to the Respondent, and the Respondent filed an unfair labor practice charge with the Board. On July 11, the Respondent began picketing with signs reading: "I.U.O.E. Local 150 AFL-CIO ON STRIKE AGAINST Donegal Services LLC FOR UNFAIR LABOR PRACTICES." The Respondent picketed at Donegal's facility in Lemont, Illinois, at the Willco Green landfill (where Donegal had a continuous presence), and at other locations where Donegal employees (followed by Respondent agents) performed work. The Respondent picketed Donegal from July 11 until September 26.[7]

Also, beginning sometime in July, the Respondent exhibited stationary banners and inflatable rats at about a dozen facilities of entities that did business with Donegal. The banners read "SHAME ON [business name] for [using or harboring] RAT CONTRACTOR[S]." These displays were erected in the public right-of-way facing the street, and staffed by one to three union agents who typically remained seated. There is no credited record evidence that the Respondent's agents who were picketing ever physically approached the Respondent's secondary displays or that agents staffing the secondary dis-

objective through intimidation, it may be found unlawful without "pos[ing] serious questions of the validity of § 8(b)(4) under the First Amendment." Id. at 575. But where such activity—handbilling or otherwise—employs "mere persuasion" to achieve its goal, the Board must avoid raising those questions and find that the conduct does not violate Sec. 8(b)(4). Id. at 580. Thus, for the reasons stated by the judge and in their concurring opinion in *Lippert,* Members Kaplan and Ring find that the rat-and-banner displays at issue here do not fall within the ambit of Sec. 8(b)(4)'s prohibitions.

As to the Willco Green landfill and recycling facility in Plainfield, Illinois, we note that the judge found that the Respondent did not violate Sec. 8(b)(4) by exhibiting similar displays there because no neutral person was doing business at this location. But because the Respondent's displays at Willco Green were not relevantly distinguishable from the other displays we have found lawful in this case and in *Lippert Components*, we conclude that the Willco Green displays were lawful whether or not a neutral entity was present. We accordingly find it unnecessary to reach the judge's analysis of the business relationships between and among the Respondent and the various Illinois Limited Liability Companies associated with the Willco Green facility or to pass on the Charging Parties' and Respondent's exceptions related to that analysis.

With respect to allegations relating to Andy's Frozen Custard, we note that the Charging Parties' exception to the judge's credibility-based finding that the Respondent did not exhibit displays at the store in Bolingbrook is moot because the displays allegedly exhibited there would, in any case, have been lawful. The Charging Parties also except to the judge's discounting of testimony that the Respondent's activity stopped Andy's Frozen Custard from contracting with Donegal, but this question, too, is moot because the Sec. 8(b)(4) status of a union's communications to secondary employers and their customers does not turn on the secondary employer's response. See *DeBartolo*, 485 U.S. at 580 (handbill urging boycott does not "coerce" secondary employers within the meaning of § 8(b)(4)(ii)(B), even if a neutral employer reacts to loss of customers resulting from that message).

Finally, we note that, while the General Counsel alleged and the judge found that the Respondent's banner and rat campaign targeted Overstreet Builders, the judge's analysis does not specifically address the allegation related to Overstreet Builders. Because the Respondent's conduct towards Overstreet Builders appears relevantly indistinguishable from that involving the other secondary entities in this case, we shall dismiss the allegation referring to Overstreet Builders along with the other similar allegations.

[5] We have amended the judge's conclusions of law consistent with our findings herein. We shall modify the judge's recommended Order to conform to our findings, to the Board's standard remedial language, and in accordance with *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020), and we shall substitute a new notice to conform to the Order as modified.

[6] Dates below are in 2018.

[7] The General Counsel does not allege that any of this primary picketing, including ambulatory picketing at neutral facilities, violated Sec. 8(b)(4).

plays ever patrolled, exhibited picket signs as described above, or spoke with employees of any neutral employer.

Among the locations where the Respondent exhibited secondary displays (in addition to those noted above in footnote 4) were Boughton Materials' limestone quarry near Plainfield, Illinois, where Donegal sometimes purchased limestone, and Elmhurst-Chicago Stone's landfill in Bolingbrook, Illinois (ECS Bolingbrook), where Donegal sometimes disposed of waste material.

On the morning of July 11—the first day of the Respondent's picketing campaign—Respondent business representative Anthony Deliberto followed a Donegal truck from Donegal's Lemont facility to Boughton Materials in order to establish a picket. Boughton Materials owner John Boughton instructed Deliberto to leave the property. Deliberto then picketed outside the Boughton Materials gate until the Donegal truck departed. The record does not establish that the Respondent picketed at Boughton Materials on any other occasion. At some point in July, the Respondent set up an inflatable rat and a banner reading "SHAME ON BOUGHTON MATERIALS INC. FOR HARBORING RAT CONTRACTORS" in the public right-of-way outside the Boughton Materials gate.[8] On about July 20, Boughton Materials Vice President Frank Maly informed Deliberto by telephone that Boughton Materials would stop loading Donegal trucks, and the Respondent took down its rat-and-banner display.[9] Sometime later—in late August or early September—Deliberto left a voicemail message for Maly asking to discuss Boughton Materials' sale of limestone to a different company for Donegal's use. Deliberto stated to Maly, "You know there is gonna be possible picketing activity with this." Maly confirmed that the other company had been purchasing stone for delivery to Donegal and informed that company—and Deliberto—that Boughton Materials would no longer sell it stone for that purpose.

Separately, the Respondent displayed inflatable rats and a banner reading "SHAME ON ELMHURST-CHICAGO STONE FOR HARBORING RAT CONTRACTORS" outside the ECS Bolingbrook landfill during July and August.[10] Donegal owner Bradley testified that he observed Respondent's agents in black cars following Donegal trucks around the ECS Bolingbrook landfill in middle to late August. There is no other specific credited record evidence of the Respondent picketing Donegal at that facility.

The judge concluded that the rat-and-banner displays at both sites violated Section 8(b)(4)(i) and (ii)(B) because the displays at each site "in proximity to the repeated ambulatory picketing were coercive to a reasonable person attempting to engage in commerce" with, respectively, Boughton Materials or ECS Bolingbrook, and "induced or encouraged employees [of Boughton Materials or ECS Bolingbrook] to withhold their labor or services" from their employer. The judge additionally concluded that Maly would reasonably have understood Deliberto's voicemail to threaten a resumption of the Respondent's previous conduct at Boughton Materials, including its rat-and-banner displays. Based on her conclusion that the previous displays were unlawful, she found that Deliberto's threat to resume them also violated Section 8(b)(4)(ii)(B). With respect to ECS Bolingbrook, the judge additionally found that the Respondent's displays there violated Section 8(b)(7)(C) because they occurred in the presence of picketing at a time that the picketing violated that section. For the reasons explained below, we reverse each of these conclusions.

II.

Section 8(b)(4)(ii)(B) makes it an unfair labor practice for a union to "threaten, coerce, or restrain any person engaged in commerce" with an object, inter alia, of "forcing or requiring any person . . . to cease doing business with any other person." As we have recently reaffirmed, a union's handbilling or display of stationary banners or an inflatable rat at the facility of a neutral person engaged in commerce does not, without more, "threaten, coerce, or restrain" the neutral within the meaning of Section 8(b)(4)(ii)(B), even where the union's communications seek to persuade the neutral's customers to withhold their patronage in order to persuade the neutral to cease doing business with an employer with whom the union has a primary labor dispute. See *Lippert Components*, above.[11]

[8] The record does not clearly establish the date upon which the Respondent first exhibited this display. Some testimony suggests it may have been as early as July 11, while other testimony suggests it was not until the following week. In light of our analysis below, we find it unnecessary to determine this specific date.

[9] We do not rely on the judge's finding that the Respondent was legally required to remove its display at that time to the extent that finding could be read to imply that the provisions of the National Labor Relations Act define the scope of the Respondent's First Amendment protections.

[10] Again, the record does not clearly establish the dates upon which the Respondent exhibited these displays.

[11] See also *DeBartolo*, above (handbilling); *Eliason & Knuth*, above (banners); *Brandon Medical Center*, above (inflatable rats). In *DeBartolo*, a union distributed handbills urging customers to boycott a shopping mall in order to pressure mall tenants and mall-owner DeBartolo to bring pressure, in turn, upon mall-tenant H.J. Wilson Company in order to force Wilson to cease doing business with H.J. High Construction Company, with which the union had a primary labor dispute. 485 U.S. at 570–571. In a prior opinion in the same case, the Supreme

The Board, however, has found that a union's otherwise lawful handbilling violated Section 8(b)(4) where it was "inextricably linked" with the union's unlawful picketing of a neutral.[12] And where a union's handbilling at a neutral facility has been closely associated with picketing that failed to respect an established neutral gate or otherwise to adhere to the guidelines set forth in *Moore Dry Dock*,[13] the Board has found that the handbilling violated Section 8(b)(4).[14]

Here, contrary to the judge, we find as a factual matter that the General Counsel has established, at most, that the Respondent exhibited secondary displays in proximity to primary picketing on one occasion at one location—the morning of July 11 at Boughton Materials. Notwithstanding this evidence of primary picketing and secondary activity at the same facility during the same period of time, the record evidence falls far short of establishing that the Respondent's secondary displays violated Section 8(b)(4)(ii)(B) under the cases described above. The Respondent took steps to assure that its secondary displays were clearly partitioned from—as opposed to inextricably linked with—its primary picketing. It picketed only where Donegal was present at a neutral facility in the normal course of business. Different Respondent agents staffed the secondary displays and the pickets, and the two activities were conducted in separate locations, i.e., on opposite sides of the facility's gate. Moreover, the secondary displays conveyed a different message (the Respondent's disapproval of neutral employers' business dealings with unnamed "rat contractors") than its primary picket signs, which clearly disclosed the Respondent's primary dispute with Donegal. Thus we find no basis in the Board's prior interpretations of Section 8(b)(4) for concluding that the Respondent's secondary displays at Boughton Materials or ECS Bolingbrook were rendered unlawful by the Respondent's primary picketing of Donegal.[15] Accordingly, we shall order the relevant Section

Court held that Sec. 8(b)(4)'s publicity proviso (which permits nonpicketing publicity truthfully advising the public that a neutral distributes a product produced by an employer with which the union has a primary dispute) did not protect the union's handbilling because "DeBartolo and the other tenants, as opposed to Wilson, did not distribute products of High." Id. at 573. After a second Board decision on remand, the Court subsequently held that the handbilling did not "threaten, coerce, or restrain" neutrals within the meaning of Sec. 8(b)(4)(ii)(B) because neither the section's language nor its legislative history foreclosed construing the section to exclude such conduct, while a broader construction would raise serious constitutional questions under the First Amendment. Id. at 578–588. To the extent that the judge's decision characterizes the facts and holdings of *DeBartolo* differently, we do not rely on that characterization. In addition, we do not rely on language in the judge's decision that could be read to suggest that the Sec. 8(b)(4)(ii)(B) allegations in this case turn on whether the Respondent "threatened, coerced, or restrained" potential patrons of neutral businesses. Granted, the extent to which union agents confront or intimidate a neutral's potential customers may be relevant to the distinct legal question of whether the union's conduct counts as "picketing." See, e.g., *Chicago Typographical Union No. 16 (Alden Press)*, 151 NLRB 1666, 1669 (1965) (finding confrontation a necessary condition of "picketing"). But the ultimate statutory question under Sec. 8(b)(4)(ii)(B) is the effect of the union's conduct upon the neutral persons engaged in commerce named in the General Counsel's complaint, not upon potential customers of those neutrals.

Members Ring and Kaplan agree that the ultimate issue under Sec. 8(b)(4)(ii)(B) is whether a union's conduct threatens, coerces, or restrains a neutral entity. Consistent with the principles articulated in their concurrence in *Lippert*, however, they do not believe that Sec. 8(b)(4) attaches "decisive significance to whether disputed conduct has the same attributes as 'traditional picketing.'" 371 NLRB No. 8, slip op. at 6. Rather, they believe that "the prohibition of Sec. 8(b)(4) 'is keyed to the coercive nature of the conduct, whether it be picketing or otherwise.'" Id., slip op. at 6-7 (citing *NLRB v. Fruit & Vegetable Packers & Warehousemen, Local 760 (Tree Fruits)*, 377 US 58, 68 (1964)). Moreover, they believe that a union's interactions with a neutral's customers may be relevant to a Sec. 8(b)(4)(ii)(B) analysis to the extent those interactions shed light on whether the union's conduct threatens, coerces, or restrains the neutral.

[12] E.g., *Cement Masons Union 337 (California Assn. of Employers)*, 190 NLRB 261, 261 fn. 1, 266 (1971) (union's concurrent picketing and handbilling violated Sec. 8(b)(4)(ii)(B) where it urged a total boycott of a neutral's business), affd. as supplemented by 192 NLRB 377 (1971), 468 F.2d 1187 (9th Cir. 1972), cert. denied 411 U.S. 986 (1973).

[13] Pursuant to *Moore Dry Dock*, which applies where a union pickets a primary employer at a secondary employer's premises, there is a rebuttable presumption that the picketing does not violate Sec. 8(b)(4) where "(a) [t]he picketing is strictly limited to times when the *situs* of dispute is located on the secondary employer's premises; (b) at the time of the picketing the primary employer is engaged in its normal business at the *situs*; (c) the picketing is limited to places reasonably close to the location of the *situs*; and (d) the picketing discloses clearly that the dispute is with the primary employer." *Sailors' Union of the Pacific (Moore Dry Dock Co.)*, 92 NLRB 547, 549 (1950) (citations omitted). See also *Teamsters Local 560 (County Concrete Corp.)*, 360 NLRB 1067, 1067–1068 (2014).

[14] See, e.g., *Service Employees Local 254 (Women & Infants Hospital)*, 324 NLRB 743, 743, 748 (1997) (leafleting violated Sec. 8(b)(4)(ii)(B) "to the extent that it was done in conjunction with . . . illegal picketing"); *Teamsters Local 315 (Santa Fe)*, 306 NLRB 616, 616, 631 (1992) (handbilling violated Sec. 8(b)(4)(i) and (ii)(B) where it was "part and parcel of" and "inextricably linked with" unlawful picketing at entrances to rail yard reserved exclusively for neutrals), enfd. 20 F.3d 1017 (9th Cir. 1994), cert. denied 513 U.S. 946 (1994); *San Francisco Building Trades Council (Goold Electric)*, 297 NLRB 1050, 1056-1057 (1990) (combined handbilling and picketing at a neutral gate and expressly aimed at neutral employees violated Sec. 8(b)(4)(i) and (ii)(B), distinguishing *DeBartolo*). But cf. *Southwest Regional Council of Carpenters (Held Properties I)*, 356 NLRB 21, 21 (2010) (prior picketing does not render peaceful display of banners unlawful); *Service Employees Local 525 (General Maintenance Co.)*, 329 NLRB 638, 639 & fn. 12, 681 (1999) (after *DeBartolo*, "the Board has posited that handbilling is not to be regarded as coercive simply because picketing either precedes or follows it, even where no hiatus occurs between the two") (citing *Laborers Local 332 (C.D.G., Inc.)*, 305 NLRB 298 (1991)), affd. 52 Fed. Appx. 357 (9th Cir. 2002).

[15] Separately, the Board has characterized handbilling or other conduct not involving patrolling as unlawful "picketing" under Sec. 8(b)(7) where circumstances indicated that the conduct was a *substitute* for primary picketing at a time when that section would proscribe such

8(b)(4)(ii)(B) complaint allegations dismissed.[16] Finally, we agree with the judge that Boughton Materials Vice President Maly would reasonably have understood Deliberto's voicemail message to refer to a possible resumption of the Respondent's earlier activity at Boughton Materials, including both picketing and secondary displays. But because we have found that that earlier activity did not violate Section 8(b)(4), we conclude, contrary to the judge, that Deliberto's voicemail was also lawful.

AMENDED CONCLUSIONS OF LAW

1. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

2. Donegal Services, LLC (Donegal) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. By picketing Donegal with an object of forcing or requiring Donegal to recognize or bargain with the Respondent as the representative of Donegal's employees or forcing or requiring those employees to accept or select the Respondent as their collective-bargaining representative, at a time that the Respondent was not certified as such representative, and where the picketing was conducted without a petition being filed under Section 9(c) within a reasonable period of time not to exceed 30 days from the start of picketing, the Respondent violated Section 8(b)(7)(C) of the Act.

4. The Respondent has not violated the Act in any other manner except as specifically found herein.

ORDER

The National Labor Relations Board orders that the Respondent, International Union of Operating Engineers, Local 150, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Picketing or causing to be picketed Donegal Services, LLC (Donegal), where an object thereof is forcing or requiring Donegal to recognize or bargain with the Respondent as the representative of Donegal's employees, or forcing or requiring those employees to accept or select the Respondent as their collective-bargaining representative, at a time when the Respondent is not certified as such representative, and where such picketing has been conducted without a petition under Section 9(c) of the Act being filed within a reasonable period of time not to exceed 30 days from the start of such picketing.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its business offices and meeting places copies of the attached notice marked as "Appendix".[17] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with members by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and return to the Regional Director for Region 13 sufficient copies of the notice for posting by

picketing. See, e.g., *Lawrence Typographical Union No. 570 (Kansas Color Press)*, 169 NLRB 279, 282–284 (1968) (union handbilling after decertification-election loss violated Sec. 8(b)(7) because it "substituted for the conventional picketing which had preceded it"), enfd. 402 F.2d 452 (10th Cir. 1968); *Lumber & Sawmill Workers Local No. 2797 (Stoltze Land & Lumber Co.)*, 156 NLRB 388, 393–395 (1965) (same). Here, though, the distinct messages and targets of the Respondent's secondary displays and primary picketing made it clear that the displays were not intended to function, and did not function, as substitutes for primary picketing after that picketing came to violate Sec. 8(b)(7).

[16] We also dismiss the related Sec. 8(b)(4)(i)(B) allegations because there is no evidence that the Respondent's displays induced or encouraged any individual to withhold labor from his or her employer, including by communicating a message that "would reasonably be understood by the employees as a signal or request to engage in a work stoppage against their own employer." *Iron Workers Local 229 (Commercial Metals Company d/b/a CMC Rebar)*, 365 NLRB No. 126, slip op. at 4 (2017) (citation omitted), enfd. 941 F.3d 902 (9th Cir. 2019), cert. denied --- S. Ct. ---- (2021); *Los Angeles Building & Construction Trades Council (Sierra South Development)*, 215 NLRB 288, 290 (1974). We further find, contrary to the judge, that the Respondent's secondary displays at ECS Bolingbrook were not themselves picketing in violation of Sec. 8(b)(7)(C). In this respect, we note that the General Counsel neither alleged nor argued that any of the Respondent's rat-and-banner displays, including those at ECS Bolingbrook, violated Sec. 8(b)(7)(C).

[17] If the Respondent Union's office is open to members and employees, the notices must be posted by the Respondent and delivered to the Regional Director for Region 13 for posting by Donegal, if it wishes, within 14 days after service by the Region. If the office involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted and delivered within 14 days after the office reopens and a substantial complement of members and employees have returned to accessing the office. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its members by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Donegal, if it is willing, at all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. September 28, 2021

Lauren McFerran, Chairman

Marvin E. Kaplan, Member

John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT picket or cause to be picketed Donegal Services, LLC, where an object thereof is forcing or requiring Donegal to recognize or bargain with us as the representative of its employees, or forcing or requiring those employees to accept or select us as their collective-bargaining representative, at a time when we are not certified as such representative, and where such picketing has been conducted without a petition under Section 9(c) of the Act being filed within a reasonable period of time not to exceed 30 days from the start of such picketing.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights listed above.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150

The Board's decision can be found at www.nlrb.gov/case/13-CP-227526 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940

Kevin M. McCormick, Esq., for the General Counsel.
Scott Gore, Esq. (Laner Muchin), for the Charging Parties.
Melinda Hensel, Steven A. Davidson, James Connolly, and *Brad Russell, Esqs. (In-house counsel),* for the Respondent.

DECISION

INTRODUCTION

KIMBERLY R. SORG-GRAVES, Administrative Law Judge. Counsel for the General Counsel (General Counsel) of the National Labor Relations Board (Board) contends "[t]hat this case can be summed up in a sentence: "Donegal Services, LLC either had to recognize Local 150 as the representative of its employees or go out of business." (GC Br. at p. 5.)[1] To support this conclusion, General Counsel asserts that Local 150 picketed Donegal with a representational or organizational object for more than 30 days, displayed banners and inflatable rats outside of the premises of secondary employers with which Donegal does business, and made unlawful statements evidencing its motives. I find that General Counsel's assertions are not fully supported by the record and current legal precedent. I further note that other plausible motivations for Local 150's actions exist, such as incentivizing Donegal to improve the terms and

[1] Abbreviations used in this decision are as follows: "Tr." for the Transcript, "GC Exh." and "GC Brief" for the General Counsel's exhibits and posthearing brief, "CP Exh." And "CP Brief" for Charging Parties' exhibits and posthearing brief, and "R. Exh." and "R. Brief" for Respondent's exhibits and posthearing brief. Specific citations to the transcript and exhibits are included where appropriate to aid review and are not necessarily exclusive or exhaustive. My findings and conclusions are not based solely on the record citations contained in this decision, but rather, are based upon my consideration of the entire record for this case.

conditions of work for its employees and to maintain compliance with State and Federal regulations as a means of providing an even playing ground for employers who recognize Respondent and employ its members.

Regardless of the totality of Local 150's motivations, I agree that Local 150 sought in part to organize certain employees of Donegal and that it picketed Donegal, at least partially in pursuit of this objective, for more than 30 days in violation of Section 8(b)(7)(C). I further find that Respondent's display of banners and inflatable rats outside of secondary employers' premises in the presence of picketing violated Section 8(b)(4)(i)(ii)(B) and in one case also violated Section 8(b)(7)(C). I find credible evidence that one of Respondent's agents made statements to a secondary employer in violation of Section 8(b)(4)(i)(ii)(B). I decline to find that other alleged unlawful statements were made. I do not find that Respondent's displays of banners and inflatable rats outside of secondary employers' premises, where no picketing or otherwise coercive conduct occurred, violated Section 8(b)(4)(i)(ii)(B) or 8(b)(7)(C). I also find that Donegal Services, LLC and SJZJ, LLC are a single-integrated employer and are primary to the labor dispute with Local 150. I further find that Respondent had a separate primary labor dispute with one of the alleged secondary employers, E.F. Heil, LLC, d/b/a Willco Green, resulting in a finding that Local 150's conduct at the Willco Green landfill did not violate Section 8(b)(4)(i)(ii)(B) of the Act, but did violate Section 8(b)(7)(C) to the extent that picketing continued there beyond 30 days after it was initiated.

STATEMENT OF THE CASE

On September 18, 2018, Charging Party Donegal Services, LLC (Donegal) filed Cases 13–CP–227526 and 13–CC–227527, and on November 26, 2018, Donegal filed Case 13–CC–231597. On December 20, 2018, Charging Party Ross Builders, Inc. (Ross Builders)[2] filed Case 13–CC–233109. The charges were filed with Region 13 of the National Labor Relations Board and alleged that International Union of Operating Engineers, Local 150, AFL–CIO (Respondent) unlawfully engaged in recognitional picketing for more than 30 days without filing a petition for recognition with the Board in violation of Section 8(b)(7)(C) of the National Labor Relations Act (Act) and engaged in unlawful picketing of various secondary employers in violation of Section 8(b)(4)(i)(ii)(B) of the Act. On December 20, 2018, the Region issued a consolidated complaint in this matter, which was amended on December 31, 2018. Respondent filed answers to the consolidated complaint and the amendment thereto on January 3 and 14, 2019. (GC Exhs. 1(a)–1(n).)

I heard this matter on January 16–18, 22–24, and February 7–8, 2019, in Chicago, Illinois, and I afforded all parties a full opportunity to appear, introduce evidence examine and cross-examine witnesses, and argue orally on the record. General Counsel, Respondent, and Charging Parties filed posttrial briefs in support of their positions.

After carefully considering the entire record, including my observation of the demeanor of the witnesses, and the parties' briefs I find that

FINDINGS OF FACT

Jurisdiction and Labor Organization Status

Charging Party Donegal Services, LLC is a corporation with an office and a place of business in Lemont, Illinois (Lemont facility), from which it engages in the business of residential and commercial demolition and excavation, including sewer and water line excavation work. In the 12 months preceding the date of the hearing, Donegal purchased and received goods valued in excess of $50,000 directly from points outside the State of Illinois. I find, that Donegal has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (Tr. 15; GC Exh. 2.)

Charging Party Ross Builders, Inc. is a corporation with an office and a place of business in Hinsdale, Illinois, from which it engages in the business of general construction contracting for residential homes. In the 12 months preceding the date of the hearing, Ross Builders provided services valued in excess of $50,000 to customers within the State of Illinois, who purchased and received goods valued in excess of $50,000 directly from points outside the State of Illinois. I find, that Ross Builders has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (Tr. 95–96; GC Exh. 25.)

I further find that Respondent, International Union of Operating Engineers Local 150, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act. (GC Exh. 1(m).)

UNFAIR LABOR PRACTICES

1. Background

Donegal employs approximately 40 individuals as truckdrivers, mechanics, operators, and laborers to perform its excavating, underground sewer and water line, and hauling work. Most of this work occurs in Respondent's geographical area. (Tr. 292–293.) Donegal's owner, Simon Bradley (Bradley), owns and operates several businesses related to the construction industry. (Tr. 363–364, 1234.) Donegal contracts with residential construction companies Ross Builders, Greenscape Homes, Provencal Construction, Overstreet Builders, and with several Andy's Frozen Custards retail shops (Andy's shops) to perform excavating, sewer and water line installation, and other related services.[3] (Tr. 219, 304, 325, 327.) Donegal regularly purchases materials such as gravel from Boughton Materials, and discards waste at Settler's Hill and Elmhurst-Chicago Stone landfills. (Tr. 127, 305.) Respondent makes no claim that it had a primary labor dispute with any of these entities. Donegal also regularly performs services for and uses the services of another

[2] Charging Party Donegal Services, LLC and Charging Party Ross Builders, Inc. are herein collectively referred to as "Charging Parties."

[3] It is not necessary to show actual work stoppage or refusal by a secondary company to provide goods or services to the primary to prove the allegations of the amended consolidated complaint. I note here that despite claims by Bradley that Local 150 stopped Andy's Frozen Custards from contracting with Donegal, I find no evidence that substantiates that claim. Furthermore, if Respondent influenced Andy's shops to cease contracting with Donegal it occurred before any picketing activity began. (Tr. 327.)

one of Bradley's solely owned business entities called SJZJ, LLC (SJZJ), which is the operating manager of E.F. Heil, LLC d/b/a Willco Green LLC (Heil LLC/Willco), a landfill and construction debris recycling center. As discussed more thoroughly below, a complex interrelationship of business operations exists between Donegal, SJZJ, and Heil LLC/Willco. (Tr. 380–381; R. Exh. 8.)

Respondent's geographical jurisdiction stretches from South Bend, Indiana to Iowa and includes the Chicago, Illinois metropolitan area. (Tr. 1131.) Prior to the events at issue in this case, Respondent entered into collective-bargaining agreements with Heil LLC/Willco, Boughton Materials, and Elmhurst-Chicago Stone. (Tr. 40, 1094–1095; R. Exhs. 1, 9, and 29.)

In 2017 Respondent noticed that Donegal operators perform some of the same type of work covered by Respondent's collective bargaining agreements with other employers. (Tr. 1094, 294-295.) Respondent also noticed that Donegal was performing work at Heil LLC/Willco landfill. In November 2017 Respondent's current vice president, Mike Kresge (Kresge), and business agent, Tom Ferrallo (Ferrallo), met with Heil LLC/Willco's owner, Edward Heil (Heil), and business manager, John McMahon, at Respondent's union hall. (Tr. 1097.) They discussed Heil LLC/Willco's duty under the Excavators, Inc., Heavy Highway and Underground collective-bargaining agreement (HHU-CBA) with Respondent to employ Local 150 members to operate certain equipment. At the meeting, Heil informed Kresge and Ferrallo that he had entered a purchase agreement with Bradley for one of his companies to purchase the landfill. Bradley had made a down payment of $6 million with the other half of the purchase price due in September 2018, which was later delayed. (Tr. 1097–1098; R. Exh. 8.) Kresge told Heil that Heil LLC/Willco was required by Memorandum of Agreement to be covered by the HHU-CBA, which Heil signed in 2003, to employ Local 150 members to perform operator work at Heil LLC/Willco. The HHU-CBA contains language which requires subcontractors or a successor to do the same. (Tr. 1099; R. Exh. 9 and 29 at p. 4–5.)

Somewhere around this same time period, former vice president of Respondent, Kevin Burke (Burke), contacted and met with Donegal's owner, Bradley. Burke asked Bradley to enter a collective-bargaining agreement/union contract with Respondent, and Bradley declined. Burke told Bradley that Respondent could not protect Donegal from other unions if it was not signatory to a contract with Respondent. (Tr. 295–297.)

2. The initiation of the union campaign

In December 2017, Task Force Agent/Organizer Ray Sundine (Sundine), under the direction of Kresge, started an organizing campaign for Donegal's employees. Sundine researched the company and contacted Donegal employees about their terms and conditions of employment. (Tr. 564, 1100, 1139.) Sundine continued interacting with Donegal employees from about January until the beginning of June 2018. Sundine engaged in conversations with these employees with the purpose of organizing them. (Tr. 1146.) Some employees were receptive to the idea of unionization and provided Sundine with information about Donegal's terms and conditions of employment and the contracts that Donegal was performing. One such employee was William "Billy" Hanahan (Hanahan).

Starting in June 2018[4], Respondent contracted with individuals to apply to work for Donegal as covert "salts". (Tr. 566, 740; GC Exh. 35; R. Exh. 20.) Respondent's "salt" contracts provide compensation and/or benefits for the salts in addition to their wages and benefits provided by Donegal. (Tr. 571-572.) Some of the salts also hoped to become Local 150 members by engaging in these activities. (Tr. 939-940.) The contract language requires the salts to engage in traditional organizing activities such as providing Respondent with information about Donegal's terms and conditions of employment and its employees, such as employee qualifications, seniority, and contact information. The contract requires the salts to report on employees' views on unionization and to discuss union benefits with the employees. The contract also directed the salts to inform Respondent about Donegal's business such as jobs it was performing, and any perceived safety or regulatory violations. (Tr. 566–568; GC Exh. 35.) The salts reported incidents that they perceived as possible violations of Occupational Safety and Health Administration (OSHA), Department of Labor (DOL), Department of Transportation (DOT), or Environmental Protection Agency (EPA) and similar state and federal regulations.[5] (Tr. 583–584, 750–752, 754–755, 1145; R. Exhs. 15, 16.) Between May 2018 and the hearing, seven covert salts were hired by Donegal. (Tr. 566, 570.) As of the close of the hearing the salt contracts were still in effect for the salts who remained employed by Donegal. (Tr. 576.)

The salts admit that they relayed information about Donegal employees to Sundine and attempted to organize them before July 9. (Tr. 662–663, 742, 757, 762, 858.) The salts reported organization information and numerous situations that they perceived as possible regulation violations by texting or calling Sundine. (Tr. 608–611, 762; GC Exh. 15.)

In June, an attorney for Donegal contacted Respondent to arrange a meeting to discuss the issues between them. (Tr. 1104-1105.) On June 14, Donegal's attorney, Bradley, and Jim Barry (Barry) met with Respondent's vice president and director of organizing, Kresge, and business manager, Jim Sweeney. Barry introduced himself as being there on the behalf of Bradley and that he worked at Willco Green. He gave Kresge a business card identifying Willco Green. Between June 14 and 25, these individuals communicated in person and via telephone and email on several occasions about Donegal becoming signatory to existing contracts of Respondent at least with respect to its employees performing commercial work in the positions of machine operators, low-boy truckdriver, and mechanics. (Tr. 1105–1114; R. Exh. 30–32.) Barry requested a copy of a collective-bargaining agreement, and Respondent provided him one by email. (Tr. 1112.) After June 25, Donegal did not respond further to Respondent's request that it sign a collective-bargaining agreement. (Tr. 1114.)

[4] All dates herein refer to 2018 unless otherwise noted.

[5] While I find that the salts reported numerous perceived violations to Sundine, I make no findings as to whether any such situations constituted a violation of any law or regulation outside of the National Labor Relations Act. I note that no evidence was presented that Respondent's pursuit of this information had resulted in a finding of violation by any agency at the time of the hearing.

In about May or June, Donegal was performing work for a residential home builder in Hanover Park. Local 150 members, who were employed by another company, were there to perform work. Sundine claimed he had the right to be present because Local 150 members were on the jobsite. When Donegal Supervisor William "Billy" Doherty (Doherty) arrived, Sundine's truck was parked were Donegal needed to break ground for the project. Sundine did not immediately clear the way and Doherty eventually videotaped an exchange. Approximately 30 minutes passed before Sundine moved his vehicle out of the way. (CP Exh. 2; Tr. 246–248.)

Sundine testified that in mid-June, Hanahan reported to Sundine that Doherty and Bradley's son had questioned him about how the Union knew where all their jobs were. Hanahan also reported that they knew there was a "rat" working for the company. (Tr. 1151–1153.) On July 9, Donegal fired Hanahan. The record evidence concerning his discharge is sparse but apparently Donegal alleged that he had briefly taken other employees' paychecks from the office and possibly took pictures of them. (Tr. 706, 1206.) Hanahan informed Sundine of his discharge and told Sundine that Bradley's parting words were for him to "have fun with his union buddies." Respondent filed an unfair labor practice (ULP) charge for him on that same date.[6] (Tr. 573.) Kresge left Barry a message informing him of the ULP charge. (Tr. 1114.)

I credit Sundine's testimony that the information concerning the ULP charge caused him to tell the salts to discontinue organizing activities and focus on gathering information about potential violations of State or Federal law. He also told them that they would conduct an ULP strike and explained what a ULP was. (Tr. 576, 583, 1154–1155.) Salts Steven O'Gorman, Mike Munch, and Nick Ross corroborated Sundine's testimony that he instructed them to discontinue interacting with other employees about unionization but to continue reporting other information about the company and possible violations of regulations to him. (Tr. 681–682, 743, 755–756, 760.)

On July 11, Respondent started its picketing[7] in the public right-of-way[8] at the intersection where Donegal's Lemont facility is located. Respondent's agents erected an inflatable rat.[9] Taped to the inflatable rat's chest was a sign that read, "My Name Is Simple Simon," referring to Simon Bradley. (Tr. 301; GC Exh. 33.) As many as 20 cars and union agents were present. The agents carried traditional picket signs (i.e. signs attached to sticks so that they can be held up by one hand and that display a message). The picket signs were approximately 16 inches by 30 inches and read, "I.U.O.E. Local 150 AFL–CIO ON STRIKE AGAINST Donegal Services LLC FOR UNFAIR LABOR PRACTICES." (Tr. 302, 573; CP Exh. 1.) An inflatable rat was present every day at first and then randomly until September 26. (Tr. 7, 299–303, 1208, 1213–1214.)

On July 11, Respondent also started ambulatory picketing of Donegal work performed at various customers and suppliers. Respondent's agents reported to the Lemont facility each working day and followed Donegal trucks to various locations. (Tr. 39, 974, 1047, 1065, 1157.) If a Donegal employee performed work at these locations, then the agent following the truck would exit his vehicle and establish a picket. If multiple Donegal trucks went to a jobsite or another employer's facility, then multiple picketers followed and picketed while the drivers were present. The record does not establish more than three or four pickets at any one secondary at one time. (Tr. 974–976.) The record reflects that those involved in picketing heeded property owner's requests with regards to the location of their picketing activity. (Tr. 207.)

Somewhere around the end of July or the beginning of August, Respondent set up a picket at the main gate at the Heil LLC/Willco landfill. Donegal had a presence at the landfill because truckdrivers and the trucks, roll-off dumpsters, and other equipment were assigned there on a long-term basis. (Tr. 1213.) The picket remained at the main gate until a reserve gate was established on an unknown date and the picketing moved to that entrance. (Tr. 1136, 1172–1173.)

I find that Sundine maintained some contact with Donegal employees during the ambulatory picketing campaign. On an unclear date in August during the ambulatory picketing, Sun-

[6] At hearing, General Counsel questioned Sundine about whether Respondent was aware that Hanahan had taken paychecks from Donegal or engaged in some other sort of negative activity which apparently made him unfit for employment or not credible. (Tr. 1206–1207, 1125–1127.) General Counsel and Charging Parties offered no proof that Respondent was aware of this information at the time it filed the ULP charge but asserted that Respondent would have been aware if it had performed a background or Google search on Hanahan. (Tr. 1126–1127.) I reject, as I did in hearing, the idea that a party is required to do such a search before filing a ULP on the behalf of an employee. I find that Respondent's failure to do so provides no proof that it had knowledge that the ULP charge would be withdrawn at the time it was filed. Questionable behavior by an employee may or may not have any bearing on whether an employer's action constitutes a ULP. The record reflects that Hanahan was a member of Respondent at the time of the hearing. (Tr. 575.)

[7] The term picketing throughout this decision is, unless otherwise noted, used to refer to conduct in which agents of Respondent displayed and/or moved about carrying traditional picket signs (i.e. placards affixed to a wooden stick) as described herein.

[8] Witnesses often referred to the public right-of-way bordering public roadways as the "parkway." (Tr. 98, 113, 120–121.) The record contains no evidence that Respondent trespassed onto private property while displaying banners and inflatable rats. (Tr. 41–42.)

[9] The inflatable rats used by Respondent vary slightly and may be described somewhat differently from witness to witness. They are about 6 feet wide by 10 to 12 feet tall. They are designed to sit back on their hind legs and tail with their front hand-like claws extended out in front of them. The rat's mouth is open displaying the two top and bottom incisors which are anatomically correct for a rat with the addition of drawn on or inflatable fang like teeth with which cartoon caricature rats are occasionally drawn. The coloring of the balloons consists of shades of brown, gray and black and in some cases includes red eyes and a red scaly/scabby looking patch on the abdomen. The balloon rats are inflated by a portable generator powered fan. After being erected, the balloons were tethered and staked to the ground. Unions frequently refer to these inflatable rats as "Scabby". (Tr. 125, 300, 984; GC Exhs. 4-13, 16, 18–20, and 33; R. Exh. 6; CP Exhs. 1 and 13.)

dine offered to buy Donegal driver Timothy Mix (Mix)[10] lunch if he would stop so Sundine could also stop, which Mix accepted. Mix recalls asking Sundine "When is this going to end?" Mix claims that Sundine responded, "Not until Simon closes his doors." (Tr. 159–160.) Sundine claims that he responded that he "keep[s] coming back until my boss tells me not to come back no more." (Tr. 1150.) While union organizing was not directly discussed, Sundine was maintaining contact with employees. (Tr. 1149–1150.)

Similarly, the salts were not explicitly attempting to organize employees but did relay employee information, including employee comments about Local 150, back to Sundine. I also find that this reporting conduct by salts continued beyond August 10. For example, sometime after August 13, salt Steven O'Gorman asked Mix what he thought about Local 150 and reported to Sundine that Mix was more interested in the casino industry than Local 150. (Tr. 869–870, 934.) On August 17, O'Gorman, while wearing a Local 150 shirt, distributed Local 150 sticker packets to employees at the Willco landfill, including Donegal truckdriver Nicholas Ross, who is also a Local 150 salt, and to the employee who dispatches Donegal roll off trailer truckdrivers. (Tr. 770–772, 791, 867, 919–925.) O'Gorman reported to Sundine which employees had taken stickers and other information about employees' work. (Tr. 927.) As late as October 31, Sundine requested that a salt question an employee about his impression of unionization and the salt reported back to Sundine by text. (Tr. 689-690.) While the record contains only a few examples of this exchange of information, I note that there is no evidence of Sundine or any agent of Respondent directing the salts to discontinue providing this information.

The union representatives picketed at Donegal's Lemont facility, conducted ambulatory picketing, and picketed at the Willco landfill until September 26 when Respondent signed a settlement agreement proposed by Region 13 to resolve the Section 8(b)(7)(C) allegations, but Region 13's Regional Director ultimately did not approve the agreement. (Tr. 7, 1208, 1213–1214.)

On August 21, Respondent withdrew the charge that it filed on July 9 alleging that Hanahan had been unlawfully discharged. That same day Respondent filed a new charge in Case 13–CA–231913 alleging that Bradley had unlawfully called the police in response to Local 150's protected activity. That charge was dismissed on September 28.

On September 5, Respondent filed Case 13–CA–226831 alleging Donegal unlawfully interrogated employees. The Region issued complaint with a hearing set for April 4, 2019, in that case along with Case 13–CA–231913, which Respondent filed on November 30, alleging that O'Gorman's hours were reduced because of his union activity. In March of 2019, the allegation that Donegal reduced Gorman's work hours was dismissed for insufficient evidence and the interrogation allegation was handled by a merit dismissal on March 29, 2019.[11]

On September 26, Respondent filed a grievance with E.F. Heil, d/b/a Willco Green, LLC alleging that the company, since about August 29, had been employing nonbargaining unit employees to perform work in violation of its HHU-CBA with Respondent. (Tr. 1135–1136; R. Exh. 41.) The record does not clarify whether the filing of this grievance had anything to do with the signing of the settlement agreement on the same date. While Respondent stopped picketing Donegal, Respondent continued to display a banner and inflatable rat, as discussed more below, at many locations, including on the side of the Willco landfill where the non-reserved main gate is located. The proximity of this display to the main gate is not clear in the record.

Employee David McElroy initially worked for Donegal. The record is unclear as to why his work at Donegal ended other than Donegal ended his afternoon shift, but Barry, with Bradley's knowledge, hired him as a leadman and machine operator for SJZJ at the Willco landfill, which is work arguably covered by the HHU-CBA. (Tr. 1173–1174.) McElroy was discharged on November 14. McElroy was the last employee working at the Willco landfill who received benefits pursuant to the HHU-CBA. (Tr. 1135–1136; R. Exhs. 29 and 33.) Sundine filed a grievance on the behalf of McElroy over his discharge and contacted both Heil and Barry to conduct the step 1 discussion about the grievance. Heil denied that McElroy worked for him and Barry questioned Sundine about what the second step of the grievance process is before he forwarded the grievances to Heil. (Tr, 1174–1176; R. Exh. 33.)

3. The banner and inflatable rat campaign

On approximately July 25, Respondent initiated its banner and inflatable rat campaign that continued in some locations through the dates of the hearing. (Tr. 984.) Respondent's banners are approximately 3 to 4 feet by 5 to 6 feet. (Tr. 984, 1117, 1162.) In each case, they were stationary, erected in the public right-of-way facing the street. The banners were supported by stakes and in some cases short support cords attached to ground stakes. (Tr. 984, 1162.) The banners read, "SHAME ON [contractor's name] FOR HARBORING/USING RAT CONTRACTORS." The name of a company that contracted with Donegal for services or provided goods or services to Donegal was inserted in the space for the contractor's name, including Ross Builders, Greenscape Homes, Provencal Construction, Overstreet Builders, Andy's Frozen Custards, Boughton Materials, Elmhurst-Chicago Stone, and Willco Green. On either side of the space for the contractor's name is a picture of a cartoon rat. The rat drawings look more villainous on some banners. On other banners they are wearing a hard hat and look more cartoonish like they are jumping in surprise. (GC Exhs. 3–20; R. Exh. 4, 5, and 6; CP Exh. 13.) Respondent also used a box truck sized movable billboard where the box portion of the truck has been replaced by a two-sided billboard approximately the length and height of a typical box truck. Like the banners, the billboard read, "SHAME ON [contractor's name] FOR USING RAT CONTRACTOR." The record reflects that the yellow billboard truck was parked at one Andy's Frozen Custards location on a few occasions. (Tr. 321, 328, 362; GC Exh. 14.)

Most of the time, but not always, the banners were accompa-

[10] While the record contains some evidence that hints towards Mix having supervisory authority, I decline to find that he is a supervisor on such limited evidence.

[11] I took judicial notice of NLRB documents in these cases.

nied by an inflatable rat. The inflatable rats were positioned behind or beside the banners as space allowed in the public right-of-way. In some instances, the banner and rat were delivered in a "rat patrol" vehicle[12] which was parked on public streets or public right-of-way in the vicinity of the rat and banner display. (R. Exhs. 5 and 6.) Frequently displayed near the inflatable rats were what appear to be yard signs approximately 18 inches by 24 inches reading, "[Facebook symbol] facebook, WhereIsScabby; twitter [Twitter symbol], WhereIsScabby." (GC Exhs. 10, 16–20.) Absent some vague hearsay evidence, the record is silent as to what information is available if one follows Scabby on either of these social media platforms. (Tr. 330.)

In addition to some union business/task force agents, Respondent employed union retirees, and wives and children of union members to erect, monitor, and remove the banners and rats each day. (Tr. 982–983, 1162–1163, 1169.) The number of people monitoring a banner varied between 1 and 3 but mostly consisted of 2 people. (Tr. 131–132, 983–984, 1158, 1169.) These monitors typically sat nearby in lawn chairs in the open or under portable canopies or in the vehicles in which they came. (Tr. 1162; GC Exhs. 3–20, R. Exhs. 5 and 6.) There is no credible evidence that these monitors engaged the public or employees of the companies involved. The monitors of the banners were not given picket signs and there is no evidence that they displayed picket signs at the banner and inflatable rat displays.[13] (Tr. 1162, 1169.)

Other than the description of the banner display setup discussed above, the general locations of where the bannering occurred, and the photographic evidence introduced as exhibits, the record does not contain more specific information about the banner and inflatable rat displays at the offices of Greenscape Homes, Provencal Construction, and most of the Andy's shops. (Tr. 151; GC Exh. 28.)

4. Interactions at Ross Builders while displaying a banner and inflatable rat

Respondent erected a banner and an inflatable rat in the same manner as described above in the public right-of-way between the sidewalk and curb facing the intersection about 25 feet adjacent to the renovated residential building owned by Ross Builders. (Tr. 97–98, 100; GC Exh. 24.) The record contains no evidence of picketing or the presence of picket signs at this location. Other tenants in the building and Ross Builders' customers may have driven or walked past the display on the corner or the Rat Patrol truck parked in the vicinity. (Tr. 101–102.)

The owner of Ross Builders, Nicholas Ross (Ross), called the police twice about Respondent's presence. The police found no violation by Respondent in its setup of the banner and inflatable rat display or where they parked on the public street. (Tr. 113–114.) Ross attempted to block Respondent from erecting the display on subsequent days by placing USA Thin Blue Line/American Police flag yard signs in the right-of-way. (Tr. 115–116.) Ross explained that he was exercising his "First Amendment right" by displaying the flags. (Tr. 116.) Respondent's agents worked around or shifted the position of the yard signs to continue displaying the banner and inflatable rat at that location through the date of the trial. (Tr. 100–101, 984; R. Exh. 4.)

After Respondent's display had been present, Ross tracked a United Parcel Service (UPS) delivery online. The online site stated: "Work stoppage at the receiver's location has prevented delivery." Ross had the package delivered to his home address. Ross also received a letter from Respondent that was delivered by UPS. Ross testified that the delivery man told him that he could not deliver to him and was only delivering the letter because it was from Local 150 and because the men in the Rat Patrol truck had told him he could deliver it. (Tr. 104.)

David Amraen, one of the Local 150 retirees who setup and monitored the banner and inflated rat at Ross Builders, recalled speaking to the delivery driver. On January 15, 2019, Amraen was in the Rat Patrol truck when the delivery driver approached. Amraen recalled the driver commenting, "I see you have a picket line up, and I won't cross a picket line." Amraen responded, [T]his is not a picket line, we're bannering Ross Builders and we're not preventing anybody from working." (Tr. 989.) The driver replied that it was ironic because he was there to deliver a letter from Local 150 and proceeded to make the delivery. (Tr. 988–989.) On January 21, 2019, Amraen saw a UPS driver deliver a package to Ross Builders without stopping to discuss the situation. This testimony was not contradicted.

I first note that both accounts of the delivery driver's statements are hearsay. I credit Amraen's account of his statements in response to the delivery driver's comment to him. If he was intentionally lying about the conversation, I see no reason why he would mention that the driver had referred to the banner and inflatable rat as a picket line. Furthermore, Amraen's straight forward manner in testifying and his very clear recollection of this and related events, including the dates on which the events occurred, leads me to credit his testimony. (Tr. 985-987, 990.) I note significant differences between Ross's first description and his second description of his conversation with the delivery driver, which leads me to doubt the full accuracy of his recollection of the driver's statement which underline's the problem with hearsay. Ultimately, I find no reason to doubt Amraen's testimony concerning his statement to the delivery driver. (Tr. 104-110.)

5. Picketing conduct at residential construction jobsites

The ambulatory picketers followed Donegal vehicles to residential jobsites where Donegal was performing work for Ross Builders, Greenscape Homes, Provencal Construction, and Overstreet Builders. Upon arriving at these jobsites Respondent's agents exited their vehicles and displayed picket signs. Depending on the number of Donegal trucks dispatched to a jobsite, the number of picketers ranged between 1 and 4 at any one time. The record contains little information about the pick-

[12] Respondent's "rat patrol" vehicles consist of box trucks and small SUVs that are painted yellow with varying size paintings of Scabby the rat, Respondent's name, and the words, "Rat Patrol" and "Scab Tracker." (R. Exhs. 5 and 6.)

[13] Respondent admits that it often displays inflatable rats while engaging in traditional picketing as it did at Donegal's Lemont facility and at the Willco landfill but denies engaging in traditional picketing conduct or the presence of traditional picket signs at its banner displays (with or without an inflatable rat). (Tr. 1163, 1168; CP 1.)

et conduct at these jobsites other than the that provided by Donegal supervisor Doherty.

Doherty testified that Local 150 agents spoke to him on two different jobsites. The first conversation occurred at a Downers Grove residential home jobsite in Hinsdale in July or August. An unknown agent was present holding a picket sign while he stood beside the sidewalk. Doherty claims that the agent said, [a]ll the quicker this Simon signs up the better…the quicker he signs up so I can get out of here. . . . If he doesn't sign up, [] the 150 is going to put him out of business." Doherty stated that he walked away at that point. (Tr. 240–242.) Doherty testified that at another residential jobsite in Hinsdale in August or September an unknown Local 150 agent got out of his car with a picket sign when no one else was present. Doherty claims that the agent said, "Simon should sign…it would be better for you [] if he signs up." Doherty declined and walked away. (Tr. 243–244.)

I credit Sundine's testimony that the Local 150 agents were directed to not talk to Donegal employees and others on jobsites. (Tr. 1079, 1116.) Considering the length of time and the number of people involved in the ambulatory picketing and banner and inflatable rat displays, the record contains little evidence of Respondent's agents speaking to anyone, but that does not mean that the agents were always compliant. Respondent attempted to refute Doherty's testimony by calling agents who testified that they engaged in ambulatory picketing at Hinsdale residential jobsites but denied speaking to anyone on the jobsites. (Tr. 1046–1048, 1063–1065, 1074, 1079, 1085–1086.) There was nothing in these witnesses' demeanors that caused me to discredit their testimony. Despite Respondent's attempts to call the witnesses to which Doherty may have been referring, I find it impossible to determine if the agents to which Doherty alleges made the comments testified. Thus, I must decide if I credit Doherty's testimony based upon factors other than the credibility of Respondent's witnesses.

Respondent points to other testimony by Doherty that Local 150 agents made comments to him that was disproven by video tape evidence and contends that none of Doherty's testimony is reliable. Doherty testified that sometime between July and September he went through the drive thru at the Andy's shop in Bolingbrook and passed by two Local 150 agents displaying a banner. As he passed them, he rolled down his window and said, "It's so delicious." (Tr. 259.) Doherty claimed that the Local 150 agents responded that "they wouldn't eat it because it was made by rat contractors." (Tr. 261, 263, 265.) After being shown a video tape of this incident that shows Local 150 Agents Jeffrey Horne (Horne) and Paul Costin not replying in any way, Doherty claimed that the comment must have been made earlier when he was stopped at the nearby intersection. (Tr. 260–265; R. Exh. 7, video clips IMG_1350.MP4 and MVI_0556.MP4.) This claim does not make sense because the comment would have been meaningless without the context of Doherty first commenting on the frozen custard, and Horne denied that he or Costin ever made the comment. (Tr. 1004, 1007–1008.)

From his tone and mannerisms in testifying, Doherty struck me as very loyal to Bradley and personally opposed to Respondent. He also presented as a person who is likely to be quick with a comment as was evident from the video clip and the testimony concerning his taunting of Respondent's agents at the Andy's shop. It strikes me as odd that there is so little evidence that Respondent's agents made comments to Donegal employees or engaged in taunting or chanting that frequently accompanies picketing, but Doherty claims that short comments were made to him specifically evidencing an organizational motive and economic pressure to achieve that motive. From his demeanor on the stand and his comments at the Andy's shop, it seems equally unlikely to me that Doherty would walk away without commenting, as he claims he did after hearing these remarks. Ultimately, I do not credit Doherty's testimony concerning these statements.

6. Picketing and other conduct at Boughton Materials

Respondent's business agent Tony Deliberto (Deliberto) represents Local 150 union members at Boughton Materials, Elmhurst-Chicago Stone, and other mine/aggregate producers and landfills. (Tr. 794-797.) Upon learning about the planned picketing activity on July 10, Deliberto called John Boughton (Boughton), the president of Boughton Materials to notify him that Local 150 would be picketing Donegal. Deliberto was carrying out Local 150's established practice of informing employers signatory to its collective-bargaining agreements that it intended to picket a company with which the employer does business. Deliberto asked Boughton to use his managerial discretion to support Local 150. Deliberto described Boughton as being "taken back" and undecided about what action he would take. Boughton did not dispute this description of that telephone call. (Tr. 798-799.)

Boughton testified that he had another conversation with Deliberto one morning in July. He saw two black vehicles following a Donegal truck into Boughton Material's facility. (Tr. 26.) Boughton spoke with Deliberto outside of the office at the facility and no one else was present. (Tr. 29.) From Boughton's testimony it appears that they were in their vehicles during the conversation. Boughton testified that Deliberto "asked us to stop loading Donegal trucks, that they are going after Donegal. . . . We need to work together. This is a big campaign against Donegal." Boughton denied his request telling Deliberto that "Donegal is a very good customer of ours and they pay our bills." (Tr. 30.)

Deliberto's account of where and when the conversation occurred coincides with Boughton's description, but the contents of the conversation varies significantly. On July 11, Deliberto followed a Donegal truck into Boughton Materials to the office building at Pit 1. While Deliberto was still in his vehicle Boughton approached in his vehicle and no one else was present for the conversation. Boughton asked Deliberto why he was there and Deliberto responded that he was establishing a picket against Donegal. Boughton told Deliberto that he did not want them on his property. Deliberto complied and went outside the facility gate and picketed. (Tr. 799–800.)

As Boughton told Deliberto, he has cause to keep Donegal, one of his regular customers, happy. He is also reliant upon Local 150 operators to run the equipment necessary to operate his business, but Respondent's collective-bargaining agreement with Boughton Materials prohibits sympathy strike conduct

except in response to area standard strikes giving Boughton Materials, and other companies signatory to the same agreement, recourse if its operators had chosen not to work during Respondent's strike. (Tr. 812–813; R. Exh. 1 at p. 37, 22 at p. 39, 23 at p. 40.).

I credit Boughton that Deliberto told him that Local 150 was going after Donegal, that they needed to work together, that it was a big campaign, and asked if Boughton was going to stop loading Donegal trucks. When Deliberto informed Boughton of the strike activity the night before, he reminded Boughton that he could exercise his managerial discretion in deciding whether Boughton Materials would continue selling to Donegal, but Boughton was unsure of what he would do. Logically, Deliberto was still seeking an answer to that question when he saw Boughton the next morning.

Bradley stated that he witnessed an interaction between a Boughton Materials employee and a Hispanic looking man. (I note that Deliberto did not describe himself as Hispanic and other Local 150 agents did not refer to him as Hispanic or Hispanic looking.) In the midmorning of July 11 after the picketing started at the Lemont facility or within a few days thereafter, Bradley claims he went to Boughton Materials because a driver called stating that he "couldn't get material or he had a hard time getting a load or stone or something like that." According to Bradley, when he arrived, he saw two Donegal trucks enter the gate and proceeded about 500 feet to the scale house area. One driver stopped and was out of his truck apparently to speak to the Boughton Materials scale house employee. The Donegal trucks were each followed by a picketer in a black car. (Tr. 312–314.) The picketers exited their cars and retrieved their picket signs. Bradley stated that he was probably 20 to 15 feet away and then revised that number to as little as 10 feet away when the picketers, one a black male and the other a Hispanic looking male, "went running towards the scale house telling the guys not to load our trucks." (Tr. 313.) Bradley claims that the Boughton Materials' employee replied, "Get the F__ outside my gate. I told you 150 don't pay my bills. Donegal does." (Tr. 314.) The picketers just mumbled something and left.

I give no credit to General Counsel's contention that the conversation Bradley testified about is the same interchange in which Boughton and Deliberto participated. Both Deliberto and Boughton stated that no one else was present for their conversation. They were in their vehicles when that conversation occurred. Boughton stated that no refusal to load Donegal trucks had occurred until after he left for vacation. It was only after Boughton was on vacation that he learned that Boughton Materials' management decided to discontinue loading Donegal trucks for a few weeks. (Tr. 35.)

In addition, I do not find that Bradley's testimony concerned a separate incident that he witnessed. I find it problematic that Bradley never testified as to the identity of anyone present including the name of the Donegal driver that contacted him or the drivers of the Donegal trucks that were present while he was there, one of which he testified had exited his truck. Furthermore, he did not identify Boughton, Deliberto, the scale house employee, or any of the Hispanic or Black agents that Respondent called as witnesses to deny making or hearing such statements. Bradley was present for each of these individual's testimony and was recalled for rebuttal. (Tr. 160–167, 972–975, 1024, 1060, 1177–1178.) General Counsel failed to call any corroborating witness to this interchange. I also find it suspicious that the verbal exchange was so similar to Boughton's testimony, but the full context establishes that it was not the conversation between Deliberto and Boughton.

At Boughton Materials the banner and inflatable rat display sat on one side of the gate and the ambulatory picketers, at least in some instances, established their temporary pickets on the other side of the gate. The distance between them is not specified in the record, nor is the amount of time that the pickets were present while the display was also there. (Tr. 38-39, 42; GC Exh. 12.) Initially, Boughton Materials continued to sell aggregate materials to Donegal. (Tr. 316.) On about July 20, after witnessing the rat displays outside the entrance to its pit 1 quarry each day, Boughton Materials' Vice President Frank Maly reached Deliberto by telephone. Maly's recollection of this call was that he told Deliberto that Boughton Materials was going to stop loading Donegal trucks and that Local 150 won and Deliberto replied, "everybody wins now." Deliberto recalled that in response to Maly's statement that Boughton Materials would stop loading Donegal trucks he responded that "everybody wins." (Tr. 58, 69.) Later that same day Respondent discontinued its display at that location.[14] (Tr. 57–58.)

Sometime around the end of August or early September, Deliberto called Maly and left the following voicemail message:

> Hey Frank, Tony Deliberto Local 150 umm….sorry to bother you this morning over this but uhhh . . . but you got an ally of Donegal purchasing stone out of your yard right across from WillCo. The Company is called RSS Concrete and Excavating ummm. . . . But you know there is gonna be possible picketing activity with this. Give me a call back. I'd like to talk to you about it. Thank you very much." (GC Exh. 23(a) and (b).)

After listening to the message Maly contacted RSS and verified that they had been purchasing stone from Boughton Materials for Donegal. Maly told RSS that Boughton Materials would sell to RSS for its other work but not for Donegal. (Tr. 62–63; 68, 71.) The record is unclear as to when or why, but sometime thereafter Boughton Materials resumed selling stone to Donegal, but Respondent did not resume displaying a banner or inflatable rat at Boughton Materials. (Tr. 32, 38, 57–58).

7. Conduct at Andy's Frozen Custard shops

The amended consolidated complaint alleges that Respondent displayed an inflatable rat and banner near the entrance of Andy's shops in Bolingbrook, Oak Lawn, Naperville, and Countryside, Illinois. Respondent admits in its answer and the record evidence shows that it displayed various combinations of banners, billboards, inflatable rats, and rat patrol trucks in the vicinity of several Greater-Chicago area Andy's shops including those located in Oak Lawn, Naperville, and Country-

[14] I agree with Respondent's assertion that it was legally required to remove the banner and inflatable rat display because the banner was no longer truthful in stating that Boughton Materials was harboring Donegal.

side, but Respondent denies ever displaying an inflatable rat or banner at the Andy's shop in Bolingbrook. (Tr. 226–227, 230–231, R. Exh. 7; GC Exh. 1(m) at p. 4.) Photographs and one video depict Respondent's displays at several Andy's shops but none of them were identified as the Bolingbrook location. Mix claimed to have given pictures of picket signs in the presence of a banner at that location to Bradley and/or Donegal's attorney, but none were entered into evidence. (Tr. 143–144, 196–197.) Doherty stated that on one occasion he witnessed Respondent's agents pull up in a vehicle at that location, look around, and leave without displaying any banners, picket signs, or an inflatable rat. (Tr. 257–258.) The record contains no other evidence of picket signs being present at Andy's shops.

Sundine readily admitted that Respondent displayed numerous inflatable rat and banner displays at Andy's shops but denied that Respondent ever erected a banner or inflatable rat at the Bolingbrook location. Sundine testified that he drove by that location on one occasion and saw a Laborers Local 75 picket with picket signs and an inflatable rat. He believed the signs were directed at Crana, another one of Bradley's business. (Tr. 1168.)

General Counsel argues that I should credit Mix's testimony about Respondent's presence at the Bolingbrook Andy's shop because Respondent erected displays at other Andy's shops making Sundine's testimony and Respondent's denial in its answer not credible. To the contrary, I find no logical reason why Respondent would admit to the same conduct elsewhere and not admit to it at this location. I note that the amended consolidated complaint did not allege that picket signs were present. The pictures that Mix believed he took at that location, which would likely clarify which union was present, were not put into evidence. Furthermore, Bradley never denied that Donegal or another one of his companies had a labor dispute with Laborers Local 75. Thus, I find insufficient evidence to prove that Respondent displayed a banner or an inflatable rat with or without the presence of picket signs at Andy's Frozen Custards Bolingbrook location.

8. Conduct at Settler's Hill

Settler's Hill is a landfill in Illinois that does not accept contaminated materials. The record contains no evidence of Respondent erecting a banner or inflatable rat display at this location. Donegal driver Timothy Mix has only hauled debris there a couple of times. (Tr. 145.) In approximately late July or early August, Mix hauled a load of clay to Settler's Hill where he encountered Respondent's agent Daniel Opatkiewicz picketing Donegal. (Tr. 145–146, 823.) Mix and Opatkiewicz have very different accounts of this interaction.

Mix testified that one of Respondent's agents exited his vehicle and established a picket. (Tr. 146.) Mix stopped at the trailer inside the entrance of the landfill where a landfill employee is required to use a device called a "sniffer" to check the load for contamination. Mix did not state whether his load was checked but that he went into the trailer to get his ticket. (Tr. 146-147.) Such tickets indicate whether a load tested clean or contaminated and are used for invoicing. Mix proceeded up the landfill hill and dumped his load. He returned to the trailer area and saw the landfill employee who had been standing near the picketer and a Local 150 operator who worked at the facility. The landfill employee signaled for him to stop. Mix stopped and heard the picketer say that "they were on strike against Donegal and that [Donegal] couldn't dump here and he wanted them to reload me." (Tr. 147-148.) The landfill employee called his boss and Mix was detained for 15 to 30 minutes before the decision was made not to reload him but that he could not to return. Mix has not returned to that landfill. (Tr. 149.)

Opatkiewicz stated that he followed a Donegal truck into Settler's Hill and got out of his vehicle to establish a picket. (Tr. 823–824.) The truck pulled up to the trailer where the loads are "sniffed" for contaminants. The landfill employee used the "sniffer" to test the load and went back into the trailer. The driver pulled the truck off to the left side of the entrance. (Tr. 824.) Opatkiewicz returned to his car to follow the truck because he did not know where it was going. After about 5 minutes, the truckdriver drove up the hill of the landfill and dumped his load. (Tr. 826.) Opatkiewicz followed him and witnessed another landfill employee operating a dozer in another part of the landfill. (Tr. 830-833; R. Exh. 25.) Opatkiewicz followed the truck back down towards the entrance. As they approached, the landfill employee from the trailer waived the truck down. (Tr. 826.) Opatkiewicz exited his car with a picket sign and heard the landfill employee ask the driver where he went. (Tr. 827, 828.) Opatkiewicz does not recall if Mix responded. Opatkiewicz called to the landfill employee, "Why don't you reload him?" (Tr. 827.) Opatkiewicz said that he made the statement because the landfill employee's question indicated to him that the truckdriver was supposed to have waited and in his experience trucks that did not have permission to dump were reloaded. (Tr. 829.) Opatkiewicz got in his car and drove over to use the port-a-potty that was there. (Tr. 827.)

First, I find several things troubling about the evidence involving Mix's testimony. If an agent of Respondent was attempting to encourage or coerce the landfill employee into turning away Donegal trucks, why wait until after Mix had been given a ticket and allowed to dump his material to make such an appeal. Mix said that he was detained while Settler's Hill decided whether to reload him. I do not see why the landfill would go through the trouble of considering whether he should be reloaded if he was given a ticket to dump the load. Mix also stated that he was told not to return, not that Donegal was not to return. This indicates that Settler's Hill was displeased with Mix and not Donegal in general due to the strike. Second, when Bradley was asked if Donegal was kicked out of Settler's Hill landfill because a driver had dumped a contaminated load without permission, Bradley said he "would be shocked but [with] drivers anything can happen." (Tr. 456.) Again, as discussed above, Bradley hedged his answer and did not directly deny the accuracy of the assertion that Mix and/or Donegal was banned from the landfill because of improper conduct by Mix. Third, Donegal maintains copies of dump tickets, but neither General Counsel nor Charging Party Donegal offered a ticket for Mix's dump that day. Also, Bradley testified that he believed there were emails from Settler's Hill indicating that they were being refused because of Local 150. (Tr. 456.) If emails from Settler's Hill exist, I can only assume

that they do not support the allegations of the amended consolidated complaint, because they were not offered as exhibits.

General Counsel contends that I should not credit Opatkiewicz because his testimony lacked specifics and that he was responding to leading questions. I find these generalized assertions do not sway my findings in this regard. I find Opatkiewicz' testimony sufficiently detailed to be reliable. I also found his demeanor frank and forthcoming in his responses. The fact that he did not know the other people present or the specific date does not make him any more unreliable than Mix, who also could not identify a specific date or any of the people present. While Respondent counsel's questioning was choppy and sometimes leading, I find that the key details of Opatkiewicz' account were presented in narrative and I never sensed that Opatkiewicz needed to be led. Based on all the evidence in the record, I credit Opatkiewicz' account of these events that he made the comment in response to what he witnessed occurring.

9. Elmhurst-Chicago Stone in Bolingbrook and the Elmhurst-Chicago Stone Batch Plant in Elmhurst

Starting about July 11 and continuing daily until about the end of August, Respondent erected a banner and inflatable rat display very similar in nature to the displays described above near the entrance to the Elmhurst-Chicago Stone landfill in Bolingbrook. (Tr. 130–132.) The display sat in the public right-of-way facing the street. The banner read, "Shame on Elmhurst Chicago Stone for Harboring Rat Contractors." (GC Exhs. 9, 10, 26, and 27.) Donegal trucks use this entrance when hauling to the landfill; therefore, ambulatory picketers against Donegal were periodically present but the record is unclear as to where they picketed in relation to the banner and inflatable rat.

Starting about the end of August, Respondent moved the banner and inflatable rat display to Elmhurst-Chicago Stone's batch plant entrance on West Avenue in Elmhurst. (Tr. 135.) Donegal drivers did not have cause to go to the batch plant; therefore, the record contains no evidence of periodic ambulatory picketing in conjunction with the display at that facility.

10. The relationship between Donegal, SJZJ, and Heil LLC/Willco

A complex relationship exists between Donegal, SJZJ, and Heil LLC/Willco. As discussed above, Bradley executed an option to purchase the Willco landfill with Heil and paid the first half of the purchase price. In the purchase agreement SJZJ, one of Bradley's solely owned businesses, is listed as one of the entities with an option to buy the landfill. At the time of the hearing, the purchase had not been completed. Starting on September 1, 2016, Bradley as the owner of SJZJ became the manager of the landfill by virtue of an Operating Agreement. (R. Exh. 8 at Bates No. D10L0037-D10L0094.) The Operating Agreement gives SJZJ extensive control over the operations of the landfill in return for a portion of the profits. Heil LLC/Willco and its associates receive a portion of the profit once SJZJ receives a minimum profit. (R. Exh. 8, at Bates Nos. D10L00046 and D10L00054.) SJZJ operates out of Heil LLC/Willco's facilities and holds itself out to the public as Willco Green by maintaining Willco Green signage at the facility and answering the telephone as Willco Green as is allowed by the Operating Agreement. (Tr. 1375.) The Operating Agreement also provides SJZJ full discretion over who and how many to employ and the terms and conditions of its employees with the caveat that 4 of Heil LLC/Willco's employees be employed by SJZJ until the purchase is completed, unless there is cause for their removal. (R. Exh. 8, at Bates No. D10L00052.) Heil LLC/Willco's liability insurance covers the operations at the landfill, but per the Operating Agreement SJZJ is responsible for maintaining this coverage. (R. Exh. 8, at Bates No. D10L00055.)

Respondent has represented operators performing "excavation of all types" through its HHU-CBA at Heil LLC/Willco since 2003. (R. Exh. 29 at Bates No. 00125-00126.) The HHU-CBA in effect from June 1, 2017 to May 31, 2021, contains language concerning subcontracting of the work covered by the agreement and the duties of a successor. (R. Exh. 29 at Bates Nos. 00125 and 001267.)

Barry, whose salary is paid in equal shares by Donegal and SJZJ, manages the day-to-day operations at the landfill and advises Bradley on improving his business processes and adjusting employees' terms and conditions of work for Donegal and SJZJ. (1262-1263; 1316-1317.) Barry repeatedly testified that SJZJ is solely a payroll company that was setup by a former Donegal employee Kevin Egan. (Tr. 1257.) Yet, pursuant to the Operating Agreement, SJZJ is to employ the necessary employees to operate the landfill and has full discretion as to their wages, hours, and terms and conditions of employment. (R. Exh. 8, at Bates No. D10L00052.)

In addition to operating the Clean Construction Demolition Debris (CCDD) dump at the landfill, Bradley started a construction debris recycling center. The work of the recycling center is performed by a mix of employees who were employed at various times by SJZJ and Donegal. (Tr. 1139; 1365-1366.) Outside customers and Donegal truckdrivers bring materials to dump at the facility. Donegal is the landfill's biggest customer. (Tr. 420.) Certain construction materials are stockpiled, crushed, if necessary, and fed by excavators and other heavy equipment onto the recycle pick line. Recyclable construction materials such as metal, wood, and cardboard are picked from the line to be transported by Donegal truckdrivers and sold to recycle companies. The non-recyclable remnants are disposed of at the Willco landfill or nonclean debris is transported solely via Donegal trucks to another dump. (Tr. 1265, 1269.) A combination of equipment and vehicles owned by Heil LLC/Willco, Donegal, SJZJ, and personally by Bradley are used to perform this work.

Donegal submits an invoice for the equipment and operators/drivers that perform work at the landfill to Heil LLC/Willco, who pays Donegal and invoices SJZJ for the expenses. (Tr. 1256.) Similarly, when SJZJ employees perform work for Donegal, SJZJ submits an invoice to Heil LLC/Willco for payment and Heil LLC/Willco invoices SJZJ. (Tr. 1256, 1304; R. Exh. 39 at Bates No. 1047.) An SJZJ employee does this billing process for both SJZJ and Heil LLC/Willco as part of SJZJ's operating duties. (Tr. 1394.) Kevin Egan developed this system when setting up SJZJ. (Tr. 399–400.)

Bradley attends regularly scheduled weekly management meetings at the landfill and Barry frequently visits Donegal for

similar management meetings to discuss among other things, terms and conditions of employment for Donegal and SJZJ employees. (Tr. 396–397.) For example, Barry gathered information about healthcare benefit packages for both Donegal and SJZJ employees. While Donegal and SJZJ have separate policies, they are through the same insurance carrier and were implemented close in time to each other. (Tr. 431–432, 1263, 1362.) Barry also provided information to Bradley concerning the pending purchase of the Willco landfill such as information about the volume of work. (Tr. 1265.) Heil LLC/Willco does not have a separate representative at these meetings other than Bradley by virtue of the Operating Agreement. (Tr. 429–430.)

Bradley sets the rate that SJZJ charges for the use of Donegal's equipment, trucks, drivers, and operators.[15] When asked what these rates are based upon, Bradley said it was based upon the market rate and gave a general description of doing an internet search for other such contracts.[16] Ultimately, Bradley set the rate without having to negotiate or seek the approval of any other representative for SJZJ or Heil LLC/Willco. (Tr. 413.) There is no competition for the work of hauling recyclables or non-clean debris from Willco, because that work is exclusively performed by Donegal. I further note that all of Bradley's companies are managed by a parent company allowing him to file one tax return in which losses of one company can offset gains of another. (Tr. 1404.) Both Donegal and SJZJ are represented by some of the same attorneys. (Tr. 414.)

A combination of SJZJ, former Heil LLC/Willco, and Donegal employees perform this work. SJZJ employs recycle pick line workers, operators, laborers, and contracts with a mechanic. (Tr. 1366.) Scale house operator Tom Dieboldt identified himself as a 16-year Heil LLC/Willco employee and was one of the four employees that the Operating Agreement required SJZJ to employ. As Barry testified Dieboldt worked for Heil LLC/Willco, then SJZJ, and then Heil LLC/Willco again when he was put under the HHU-CBA after Heil met with Respondent's representative. In February 2019, Dieboldt was returned to SJZJ's employment. (Tr. 1366, 1435.) The record contains no evidence that Dieboldt went through any hiring process for these changes in employment status.

Between 3 and 5 Donegal truckdrivers are assigned to report directly to the Willco landfill on an ongoing basis. (Tr. 548–549, 1267; 1358.) The Donegal trucks that they operate are parked at the landfill, and they are dispatched or assigned loads by Barry for the work that they perform for SJZJ which determines their pay.[17] (Tr. 1267–1268; 1358–1360.) Barry also grants these drivers leave. (Tr. 1361.) These same drivers may be dispatched by Donegal's dispatcher to perform work for Donegal on any given day. Other Donegal employees perform work at Willco. For example, employee Panagiotis Kordelakos,[18] who is employed by Donegal, operates heavy equipment at the landfill in order to prepare material for the recycle pick line, and operates the same or similar equipment for Donegal at various jobsites. (Tr. 528–529, 533.) Donegal mechanics have been assigned to maintain vehicles or equipment leased to SJZJ or stored at the landfill and on some occasions Heil LLC/Willco or SJZJ equipment. (Tr. 418, 1255.) SJZJ also employs mechanics that may work on Donegal equipment. (Tr. 1357.) On a few occasions SJZJ/Willco employees performed truck washing or other general labor work at Donegal's Lemont facility. (Tr. 1305; 1310.) In addition to regularly leasing equipment and employees to each other, on more than one occasion, an employee was laid off or discharged by one of these entities only to be hired by the other. For example, employee Jose Becerra, also known as Chino, initially worked for SJZJ and in about November 2018 he was employed by Donegal as a mechanic. (Tr. 744; R. Exh. 12.)

ANALYSIS

Section 8(b)(7)(C)

Section 8(b)(7) limits "picketing for an object of 'recognition or bargaining' . . . or for an object of organization. Picketing for other objects is not proscribed by this Section." *Laborers Local 840 (C.A. Blinne Construction Co.)*, 135 NLRB 1153, 1156 (1962); see also *Preferred Building Services*, 366 NLRB No. 159 (2018). In *Plumbers Local 32, (Robert E. Bayley Construction*), 315 NLRB 786, 789 (1994), the Board clarified that:

> Section 8(b)(7)(C) does not expressly prohibit picketing solely for the object of protesting unfair labor practices, even if such picketing has the effect of interfering with deliveries and services. Unfair labor practice picketing will, however, be prohibited by Section 8(b)(7)(C) where (1) it also has an object of forcing or requiring an employer to recognize a union as the representative of the employer's employees; (2) such union is not currently certified as the representative of those employees; and (3) such picketing has been carried on without a representation petition having been filed under Section 9(c) of the Act within a reasonable time (not to exceed 30

[15] Donegal leases a finger screener, an excavator, a loader, a pickup, a picking station, and possibly a skid steer to the Willco landfill operation. (Tr. 414.)

[16] Throughout his testimony, Bradley often pled ignorance, lack of comprehension, or a full reliance on others for conducting his business dealings or the events that occurred at his businesses. This struck me as disingenuous and highly unlikely for a man who has amassed numerous businesses in this industry. While he may not understand all the accounting, tax, and business structures recommended by counsel and accountants, I do not accept that he does not know the general structure. Also, he often hedged his answers until some evidence or questioning required him to admit more. For example, he refused to admit that he ultimately manages the work done by SJZJ as the sole owner of SJZJ and Donegal and the employer of Jim Barry. (Tr. 383–385.) This and similar exchanges lead me to find that Bradley's testimony was often not the full unbiased truth.

[17] Donegal and other entities store roll off dumpsters at the Willco landfill without paying for the parking/storage space. These dumpsters are transported by trucks to jobsites and later returned with debris which is sorted, recycled, and/or discarded. Donegal also regularly parks trucks at the Willco landfill, and another one of Bradley's companies, U.S. Equipment, which sells large construction equipment, also stores equipment at the landfill without paying any rent. (Tr. 430

[18] While none of the witnesses could definitively state that Panagiotis Kordelakos is the real name of the employee that they "affectionately" refer to as "Pete the Greek," based upon documents this appears to be his name. (Tr. 525; R. Exh. 12.)

days)[19] from the start of the picketing. Id. at 789 (citations omitted).

The Board has found various actions to evidence a union's recognitional objective, including demands for recognition before and after the initiation of picketing conduct, delivering a sample collective-bargaining agreement to the employer, breaks in the picketing for an employer to contemplate signing the contract, and continued organizational activities with employees despite asserting an alternative reasoning for the picketing. *Operating Engineers Local 101 (St. Louis Bridge)*, 297 NLRB 485, 491 (1989); *Electrical Workers Local 265 (RP & M Electric*), 236 NLRB 1333 (1978); *Retail Clerks Local 899 (State-Mart, Inc.)*, 166 NLRB 818 (1967).

Respondent admits that it initiated an organizing drive among Donegal employees, contracted with covert "salts" to engage employees and report information about them and their positions on unionization to Respondent, met with representatives of Donegal seeking to represent their employees, and provided Donegal representatives with a sample contract. Respondent also admits that it engaged in traditional picketing for more than 30 days at Donegal's Lemont facility and at various other locations while Donegal was present.[20] This picketing conduct, including patrolling and standing about with picket signs, has previously been found to satisfy the "restraint or coercion" requirement of Section 8(b)(7). *Preferred Building Services,* 366 NLRB No. 159 (2018). Further, no petition for recognition was filed.

Respondent denies that it engaged in picketing in whole or part with an organizational or recognitional object. Instead, Respondent contends that it ceased all such pursuits after Hanahan's discharge and was solely protesting unfair labor practices through its picketing and had instructed its salts and agents to cease organizational activities. While I allowed Respondent to present evidence to prove that it sought other outcomes and no longer pursued, even in part, an organizational or recognitional object after picketing commenced, I find that the record contradicts Respondent's claim that it had fully disavowed all such efforts.

Respondent admittedly sought to represent Donegal's employees who perform operator work and took significant steps to reach this goal before commencing picketing. Respondent solicited information from existing employees and its agents engaged with employees about Local 150. While General Counsel seems to assert that Respondent's filing of unfair labor practices was solely a façade to cover its real intent of seeking to represent Donegal's operators, I find it unnecessary to reach that conclusion. Instead, I rely upon the evidence that Respondent initiated contact with Donegal in pursuit of representing its operators and that it continued to collect information about employees' positions on the union after August 10, more than 30 days after picketing commenced.

The evidence reveals that after August 10 the salts continued to inform Sundine about other employees' positions on unionization and reactions to union information, such as O'Gorman informing Sundine about which employees accepted union stickers and other reports about employees' positions on the Union. While O'Gorman may have had multiple reasons for distributing the stickers, there is only one likely reason for reporting back to Respondent about who accepted the stickers.[21]

Although subtly, Sundine also continued to seek information about employees' positions on unionization. For example, he asked salts for information about certain employees through texts. Furthermore, in situations where salts supplied him with information, I find no evidence that Sundine reiterated that the union no longer wanted such information. While I find that other motivations could explain some of Respondent's actions, considering Respondent's initial organizing efforts and the full circumstances of this case, I find the continued exploration of employees' interests in or reactions to union information evidences an ongoing organizational objective.

Accordingly, I find that Respondent picketing of Donegal at various locations occurred for more than 30 days with a recognitional or organizational object in violation of Section 8(b)(7)(C).

Primary and Secondary Employers Under Section 8(b)(4) of the Act

General Counsel and Charging Parties lump all of Respondent's activity together and make one general argument that it violated Section 8(b)(4) based upon the reasoning set forth in the dissent in *Carpenters Local 1506 (Eliason & Knuth),* 355 NLRB 797 (2010). Under current Board precedent, I find that approach insufficient to evaluate each of the issues raised by the allegations of the amended consolidated complaint and Respondent's various activities of record. Furthermore, neither General Counsel nor Charging Parties articulated an argument for why Respondent's various actions should be found to have violated Section 8(b)(4) under current Board precedent. If the current Board standard is changed as suggested in their arguments, such a situational approach may not be necessary. As the law stands, I find it necessary to consider the various actors, forms of displays, and conduct that occurred at separate locations.

[19] The Act does not define the term "reasonable period of time," but the Board has long enforced an outside limit of no more than 30 days. The Board has found pervasive picketing conduct for less than a total of 30 days sufficient to violate Sec. 8(b)(7) in some contexts. *Laborers Eastern Region Organizing Fund (Ranches at Mt. Sinai,* 346 NLRB 1251, 1267 (2006); *RWDSU, District 65 (Eastern Camera & Photo Corp.*), 141 NLRB 991, 999 (1963); *Operating Engineers Local 4 (Seaward Construction Co.*), 193 NLRB 632 (1971). Picketing accompanied by violence that took place for less than 30 days has also been found to violate Sec. 8(b)(7). *Operating Engineers Local 101 (St. Louis Bridge Construction Co.*), 297 NLRB 485 (1989).

[20] It is unnecessary to consider whether Respondent's conduct outside of traditional picketing was tantamount to picketing or otherwise coercive in order to resolve the issue of whether it violated Sec. 8(b)(7) because Respondent's picketing conduct lasted more than 30 days. Thus, this conduct alone violates Sec. 8(b)(7) if it was done in whole or part with a recognitional object.

[21] I find no merit to Respondent's assertion that O'Gorman engaged in this activity at the landfill and distributed these stickers to SJZJ employees, therefore, it was not in furtherance of an objective to organize Donegal. This is contrary to Respondent's assertion that Donegal and SJZJ are joint employers and my conclusion that they are a single-integrated employer discussed below.

1. Overview of Primary and Secondary Employers Case Law

Section 8(b)(4)(ii)(B) of the Act states that "[i]t shall be an unfair labor practice for a labor organization or its agents. . . to threaten, coerce, or restrain a person engaged in commerce . . . where . . . an object there of is . . . forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person. . . ." 29 U.S.C. § 158(b)(4)(ii)(B). In applying this provision, the Board and courts have determined that certain types of boycotts and picketing are prohibited depending on the status of the employer. A primary employer is directly involved in a labor dispute with a union, and a secondary employer does business with the primary employer but has no independent labor dispute with the union. Thus, a preliminary determination must be made as to whether the disputed conduct was directed at a primary or secondary employer, then an analysis of the conduct must determine if it threatened, coerced, or restrained employees, customers, suppliers, etc. from engaging in work or business with the secondary to coerce the secondary into ceasing business with the primary employer or to cause the primary to recognize the union as the representative of its employees when the union has not been certified as their bargaining representative. *NLRB v. Operating Engineers Local 825 (Burns & Roe),* 400 U.S. 297, 302–304 (1971). For example, traditional picketing conduct of carrying picket signs indicating that the secondary is "unfair to labor" and patrolling near a secondary employer's facility has been determined to be unlawfully coercive under Section 8(b)(4)(ii)(B). *Electrical Workers Local 2208 IBEW (Simplex Wire)*, 285 NLRB 834 (1987).

The initial inquiries are with whom does Respondent have a primary dispute and at whom is its disputed conduct directed. Section 2(9) of the Act provides a definition of a labor dispute which includes "any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee." 29 USC § 152(9). In determining whether a primary labor dispute exists pursuant to this definition one must consider whether "the union's conduct is intended to benefit the targeted employer's employees or whether the conduct is intended to satisfy the union's objectives elsewhere. *National Woodwork Manufacturers Association v. NLRB*, 386 U.S. 612, 644–645 (1967); See also *NLRB v. Enterprise Association of Steam, Hot Water, Hydraulic Sprinkler, Pneumatic Tube, Ice Machine, and General Pipefitters of New York and Vicinity, Local Union No. 638*, 429 U.S. 507, 528 (1977).

2. Boughton Materials, Settler's Hill, Elmhurst-Chicago Stone, Greenscape Homes, Provencal Construction, Ross Builders, and Andy's Frozen Custards are secondaries to the labor dispute

I find that Respondent had a primary labor dispute with Donegal that affected Donegal's employees' terms and conditions of employment. From July 10 through the date of the hearing Respondent maintained pending unfair labor practice charges with the Board and charges with other State and Federal agencies alleging violations of work place regulations. Respondent's picketing activity and banner and inflatable rat displays sought, at least in part, to address these primary labor disputes with Respondent. While Respondent's picketing was directed at Donegal, its banner and inflatable rat displays were directed at other employers with which Donegal did business. Respondent does not contest, and I find that it did not have a primary labor dispute with Boughton Materials, Settler's Hill, Elmhurst-Chicago Stone, Greenscape Homes, Provencal Construction, Ross Builders, and Andy's Frozen Custards. Accordingly, I find that these employers are secondary to Respondent's primary labor dispute with Donegal and that further analysis of Respondent's actions directed towards them is discussed below.

3. SJZJ, a single-integrated employer with Donegal, is primary to the labor dispute

Respondent asserts that it had a primary labor dispute with "Willco Green" based upon the following theories: (1) "Willco Green" is a joint employer with Donegal and/or SJZJ, and therefore, a party to Respondent's primary labor dispute with Donegal; and (2) Respondent had a separate primary labor dispute with "Willco Green" for violations of the HHU-CBA. Based upon its claim of a primary labor dispute with "Willco Green", Respondent asserts that regardless of whether General Counsel is successful in its bid to overturn current precedent, its banner and rat displays directed at "Willco Green" were lawful primary conduct.

The difficulty with Respondent's assertions is that the parties interchangeably refer to E.F. Heil, LLC d/b/a Willco Green (Heil LLC/Willco) and SJZJ, LLC d/b/a Willco Green (SJZJ) simply as Willco or Willco Green. For example, the banners that Respondent displayed at the landfill stated, "SHAME ON WILLCO GREEN FOR USING RAT CONTRACTORS," without further identifying an employer. Similarly, the amended consolidated complaint only names Willco Green without further identifying which entity is alleged as a neutral. In order to fully address the situation, I discuss whether each of these entities was neutral to Respondent's labor disputes.

In determining if an entity is enmeshed in a labor dispute between a union and primary employer, the Board assesses whether the entity is a neutral to the dispute. A union has a heavy burden to prove that an entity has lost its neutrality for purposes of Section 8(b)(4)(B). *Service Employees Local 525 (General Maintenance Co.)*, 329 NLRB 638, 639 (1999) enfd. 52 Fed.Appx. 357 (9th Cir. 2002) (unpubl.). The union must establish "that the entity is so closely identified with, and allied to, the primary that it has ceased being neutral to the dispute." Id. If the union can establish that the entity is a 'single employer' with the primary, performs the primary's struck work, or "exercises substantial, actual, and active control over the working conditions of the primary's employees" it is deemed an "ally" of the primary that has forfeited its neutrality for purposes of Section 8(b)(4)(B). *General Maintenance*, supra at 639–640. See also, *Mine Workers (Boich Mining Co.),* 301 NLRB 872, 873 (1991), enf. denied on other grounds 955 F.2d 431 (6th Cir. 1992); *Office Employees Local*

2 (Postal Workers), 253 NLRB 1208, 1211 (1981); *Electrical Workers IBEW 2208 (Simplex Wire)*, 285 NLRB 834, 838 (1987); *Lithographers Local 235* (*Henry Wurst, Inc.)*, 187 NLRB 490 (1970) (finding two companies owned by one family and engaged in related work at the same location a single-integrated employer and primary to the labor dispute).

While Respondent contends that SJZJ is a joint employer with Donegal, the more appropriate analysis is whether they constitute a single-integrated employer. The Board considers the following factors to determine whether two entities constitute a single employer:

> (1) common ownership, (2) common management, (3) interrelation of operations, and (4) centralized control of labor relations. While the Board considers control of labor relations to be a significant indication of single-employer status, no single factor is controlling and not all of the factors need to be present. The determination of a single-employer relationship depends on all the circumstances and is characterized by the absence of the arm's-length relationship found among unintegrated entities. *Alcoa, Inc.*, 363 NLRB No. 39, slip op at 6 (2015), enfd. 849 F.3d 250 (5th Cir. 2017).

The first factor is met. Bradley is the sole owner of both Donegal and SJZJ. Although these entities maintain separate accounts, Bradley files one tax return for these and other businesses that he owns affording him the tax benefit of being able to offset losses of one against the gains of another.

The record contains evidence of common management and centralized control of labor relations. While Bradley is more involved in the day-to-day operations of Donegal and leaves the day-to-day operations of SJZJ mostly in Barry's hands, Bradley and Barry have regularly scheduled weekly management meetings at the landfill and additional meetings at Donegal's office. Bradley was terribly vague and open ended about what is discussed at these meetings, but management decisions about streamlining operations and providing health insurance at both entities were discussed between Bradley and Barry and later implemented. As the sole owner with little management structure under him at each of these facilities and regular meetings with Barry, I find it very unlikely that Bradley does not at least tacitly approve of the managerial and labor relations decisions made by Barry at SJZJ. Both Barry and Bradley were familiar enough with employees of the two companies to suggest that specific employees not succeeding at one company be given an opportunity at the other. Barry spoke with Respondent's agents about the possibility of Respondent becoming the bargaining representative for operators that work for Donegal.

The record also evidences a significant interrelation of operations. Donegal is SJZJ's biggest customer. Debris from Donegal's everyday work is brought to the landfill where it is crushed and prepared along with material from other customers for the recycle pick line by a Donegal operator. Once the SJZJ employees sort the materials, a Donegal driver hauls the separated materials to their appropriate destinations. Mechanics from one operation may work on equipment from the other and employees from SJZJ have been assigned to wash Donegal trucks. Bradley deals only with himself in setting the rate for the interchanges of labor and equipment between Donegal and SJZJ. These invoices appear to go through Heil LLC/Willco, but that is simply an accounting process completed by an SJZJ employee. Per the Operating Agreement, the stake holders in Heil LLC/Willco make a profit after SJZJ has reached a minimum profit.

One of the most explicit examples of the lack of arm's-length relationship between these operations is the dispatching of Donegal drivers. Once drivers are assigned to work at the landfill, Barry controls the amount of work and pay they receive by the number of loads he assigns to them. A driver may be assigned loads by Barry in the morning for SJZJ, and then by Tim Mix or Bradley for Donegal in the afternoon, even if, Barry had additional work for them. If Bradley had leased drivers to an unrelated entity, he would not pull them from that work without notice to perform other work. Bradley takes other liberties that he would likely not do if they were unintegrated companies, such as, using the landfill property to park Donegal trucks and equipment from a third business of his without charging any rent.

Despite the separate accounting processes for Donegal and SJZJ, ultimately all the profits and losses of these companies are for the sole benefit of Bradley. With the advice of Barry, Bradley makes the operating decisions for both entities and determines the amounts to be charged for the labor and equipment that is used by the other. Based upon the totality of the circumstances, I find an absence of the arm's-length relationship between Donegal and SJZJ. Accordingly, I find SJZJ to be a single-integrated employer with Donegal, and therefore, was not a neutral to Respondent's primary labor dispute with Donegal.

Heil LLC/Willco maintained a contractor and subcontractor relationship with SJZJ, and thereby Donegal, via the Operating Agreement for more than 2 years and through the date of the hearing. I find no evidence of Heil LLC/Willco or any other entity that is signatory to the Operating Agreement exercising control of the employees employed by Donegal and/or SJZJ.[22] Bradley's continued use of Heil LLC/Willco's name, offices, and equipment, retention of four Heil LLC/Willco employees, processing invoices for Heil LLC/Willco, and coverage under Heil LLC/Willco's liability insurance for the landfill are all consistent with the Operating Agreement. While such arrangements may be considered in determining relationships between employers, they alone do not evidence that Heil LLC/Willco controlled or retained the authority to control Donegal and/or SJZJ employees' terms and conditions of work. See *Teamsters Local 557 (General Motors)*, 338 NLRB 896, 897 (2003), citing *NLRB v. Denver Building Trades Council,* 341 U.S. 675 (1951) (rejecting argument that the relationship between the general contractor and the subcontractor created a primary dispute between the union and the general contractor).

[22] I also find that up through the date of the hearing, that the landfill was still in the possession of Heil LLC and other entities listed in the Operating Agreement. Bradley and his companies at that time had not completed the purchase of the facility and were working under contract with Heil LLC and associated entities, which received a portion of the profit made by the landfill.

Therefore, I find that Heil LLC/Willco and other entities party to the Operating Agreement were secondary to Respondent's primary labor dispute with Donegal.

4. Respondent has a separate primary labor dispute with E.F Heil/Willco

Respondent also asserts that it had a separate primary labor dispute with Heil LLC/Willco for violations of the HHU-CBA. Through the date of the hearing, Heil LLC/Willco still maintained an ownership interest in the landfill and contracted through the Operating Agreement with Bradley and SJZJ, which as discussed above is a single-integrated employer with Donegal, to operate the landfill until a final sale is completed. Heil LLC/Willco still received compensation from the operation of the landfill. Thus, through the time of the hearing, I find that Heil LLC/Willco acted as a contractor subcontracting the operations of the landfill. While I make no determination on the validity of Respondent's grievances, based upon the HHU-CBA subcontracting language and the Operating Agreement, it appears that Respondent's grievance filed with Heil LLC/Willco on September 26 was not frivolous. Accordingly, I find that Respondent had a separate primary labor dispute with Heil LLC/Willco[23] which afforded Respondent the right to protest it's conduct as a primary labor dispute.

Based upon the foregoing, I find no neutral party present at the Willco Green landfill for the purposes of Section 8(b)(4) of the Act. Accordingly, I find that Respondent did not violate Section 8(b)(4)(i)(B) or 8(b)(4)(ii)(B) of the Act by its conduct directed at the operations at the Willco Green landfill.

Overview of Section 8(b)(4) of the Act

1. Section 8(b)(4)(ii)(B) legal precedent

In *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building and Construction Trades Council*, 485 U.S. 568 (1988), the Supreme Court found no violation of Section 8(b)(4) of the Act as a result of peaceful handbilling of a secondary employer where the handbill advertised a labor dispute with a contractor of the secondary employer and asked the public to not patronize the secondary employer. The Court cited *NLRB v. Fruit & Vegetable Packers Local 760*, 377 U.S. 58 (1964) (*Tree Fruits*), for the proposition that Section 8(b)(4)(ii)(B) of the Act does not proscribe all peaceful consumer picketing at the sites of secondary employers. Id. at 577 . The union in *DeBartolo* had a primary dispute with a construction company for allegedly paying substandard wages and fringe benefits. DeBartolo, a mall owner, contracted with the construction company to build a department store in the mall. Id. at 570–571. In response, union members handed out fliers at all four entrances to the mall informing the public of the dispute and seeking to use publicity to pressure DeBartolo to hire companies that paid fair wages. Id. The Court ultimately found that "more than mere persuasion is necessary to prove a violation of § 8(b)(4)(ii)(B)" and that "the loss of customers because they read a handbill urging them not to patronize a business, and not because they are intimidated by a line of picketers, is the result of mere persuasion, and the neutral who reacts is doing no more than what its customers honestly want it to do." Id. at 578 and 580. In *DeBartolo*, the union did not carry or display picket signs nor did the union members patrol. The Court found that the handbillers actions were not tantamount to picketing and ultimately found that peaceful handbilling of a secondary employer is protected by the First Amendment and not proscribed by Section 8(b)(4) of the Act. Id. at 571.

In 2010, the Board extended the reasoning in *DeBartolo* and found that stationary banners, like handbilling, are noncoercive speech conduct and do not violate Section 8(b)(4)(ii)(B). *Eliason & Knut,* 355 NLRB 797 (2010).[24] In *Eliason*, the union placed banners, approximately 3 to 4 feet high and 15 to 20 feet long, on the public sidewalk outside the secondary employer's facility approximately 15 to 1,050 feet from the entrances. Id. at 798. One banner read "SHAME ON [secondary employer]" and "Labor Dispute" while the other read "DON'T EAT 'RA' SUSHI". Id. Several union representatives stood beside each of the stationary banners and offered flyers to passersby. Id. The Board determined that the banners are not tantamount to picketing because "picketing generally involves persons carrying picket signs and patrolling back and forth before an entrance to a business or worksite . . . creating a physical, or at least, symbolic confrontation." Supra at 802. A stationary banner, unlike a picket sign, does not create any form of confrontation and members of the public can simply "avert [their] eyes." Id. at 803 (citing *Overstreet v. Carpenters Local 1506*, 409 F.3d 1199, 1214 (9th Cir. 2005)). The Board also found that the stationary banners by themselves without additional evidence was insufficient to establish that the union was engaging in signal picketing. Id. at 805. The Board further concluded that this nonpicketing conduct was not a violation of Section 8(b)(4) because the conduct did not engender the same coercive effects of picketing nor did it disrupt the secondary's operations. Id. at 805–806. The Board held that the banners conveyed speech and, "neither the character nor the size of the banners stripped them of their status as speech or expression." Id. at 809.

In 2011, the Board applied its reasoning in *Eliason* and the D.C. Circuit's reasoning in *Sheet Metal Workers' Local 15 (Brandon Regional Medical Center) v. NLRB*, 491 F.3d 429 (2007) (*Brandon I*) in finding that a large inflatable rat display erected outside the workplace of a secondary employer is not a violation of the Act. *Sheet Metal Workers Local 15* (*Brandon Regional Medical Center)*, 356 NLRB 1290 (2011). The medical facility hired two construction contractors to build an addition to the hospital. The two contractors were engaged in a labor dispute with the union regarding use of nonunion labor and wages. Id. at 1290. In addition to stationing a union mem-

[23] The record is not clear as to why Respondent alleged the August 29 date in its grievance, but it is possibly due to time limits in the HHU-CBA grievance process. The evidence of record indicates that the same conduct alleged to have violated the HHU-CBA likely predated August 29.

[24] General Counsel contends that *Eliason & Knuth* and *Brandon II* were wrongly decided and should be overturned based upon the rationale contained in the dissent in *Eliason & Knuth* and reiterated in *Brandon II*. Because I am bound by current Board precedent, I leave those arguments to be considered by the Board. I note that General Counsel nor Charging Parties contend that Respondent's banner and inflatable rat displays violated Section 8(b)(4) under current Board precedent, but that is what I am charged with deciding.

ber holding a leaflet concerning its labor dispute between two outstretched arms aimed at the incoming and outgoing traffic at the hospital's entrance, the union placed an inflated rat balloon on a flatbed trailer parked outside the hospital, approximately 100 feet from the front door. Id. The inflatable rat was approximately 16 feet tall and 12 feet wide with an attached sign reading "WTS".[25] Id. The Board "found no evidence here to support a finding that the display of the inflatable rat. . . constituted nonpicketing conduct that was unlawfully coercive." Id. at 1292.

The present case involves a factual circumstance not present in *Eliason* or *Brandon I* in that banner and inflatable rat displays often occurred in proximity to ambulatory picketing. While I find no case exactly on point, in *Southwest Regional Council of Carpenters (Held Properties, Inc.)*, 356 NLRB 21, 21 (2010) (*Held Properties I*), the Board considered whether a banner display that was preceded by picketing resulted in a meaningful factual distinction that would require a different result than reached in *Eliason.* In that case, the Union conducted 5 days of lawful area standards picketing before discontinuing the picketing and displaying a banner. Id. The picket signs identified only the primary employer, while the banners named only the secondary employer. There was no evidence that employees ceased work. Id. In determining that prior picketing does not result in a banner display being automatically viewed as a continuation of that picketing, the Board relied upon its reasoning in handbilling cases. The Board cited precedent including a pre-*DeBartolo* Board decision in holding that under the "publicity" proviso of Section 8(b)(4) "prior picketing does not render otherwise lawful distribution of handbills unlawful."[26] Id. "Indeed, handbilling has been found lawful even when it immediately followed *unlawful* secondary picketing." Id. The Board went on to distinguish *Held Properties I* from other cases where nonpicketing conduct, such as handbilling directed at the primary's employees followed recognitional picketing and was found an unlawful attempt to circumvent the limitation on picketing in Section 8(b)(7) and/or to be a continued signal for the primary employees to honor the picket line.[27] Supra at 22.

[25] WTS stood for "Workers Temporary Staffing," one of the primary contractors.

[26] See *Laborers Local 332 (CDG, Inc.),* 305 NLRB 298, 304–305 (1991), (holding that a march and rally constituted unlawful picketing, but that the handbilling before and after the rally was lawful); *Operating Engineers Local 139 (Oak Construction),* 226 NLRB 759, 759–760 (1976) (pre-*DeBartolo* holding that simultaneous picketing and handbilling were unlawful, but subsequent lawful handbilling that continued after the picketing ceased was lawful under the "publicity" proviso of Sec. 8(b)(4)).

[27] See *NLRB v. United Furniture Workers,* 337 F.2d 936, 938 (2d Cir. 1964) (union had lost a valid election within the last 12 months); *Lawrence Typographical Union No. 570 (Kansas Color Press),* 169 NLRB 279, 284 (1968), enfd. 402 F.2d 452 (10th Cir. 1968) (same); *Lumber & Sawmill Workers Local 2797 (Stoltze Land & Lumber Co.),* 156 NLRB 388, 394 (1965) (same); *Teamsters Local 812 (Woodward Motors),* 135 NLRB 851 (1962), enfd. 314 F.2d 53 (2d Cir. 1963) (same); *Mine Workers Local 1329 (Alpine Constr. Corp.),* 276 NLRB 415, 431 (1985), vacated 812 F.2d 741 (D.C. Cir. 1987) (union failed to file a representation petition within 30 days).

2. Section 8(b)(4)(i)(B) legal precedent

Section 8(b)(4)(i)(B) states that it is an unfair labor practice to "engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services' where an object thereof is "forcing" or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person…." 29 U.S.C. § 158(b)(4)(i)(B). The Board has found that a union violates Section 8(b)(4)(i)(B) by engaging in traditional picketing or other coercive conduct of a secondary employer.

The Board has also found a violation when a union engages in "signal picketing," a variant of picketing, defined as "activity short of picketing through which a union intentionally, if implicitly, directs members not to work at the targeted premises." *Southwest Regional Council of Carpenters (New Star General Contractors, Inc.)*, 356 NLRB 613, 615 (2011) (*New Star)* (quoting, *Eliason*, supra at 805). This type of picketing is generally directed at other union employees or nonunion employees of the secondary employer and suggests that they too cease work. Id. at 805. In proving a violation of Section 8(b)(4)(i), "the evidence must prove that the alleged conduct 'would reasonably be understood by the employees as a signal or request to engage in work stoppage against their own employer.'" Id. at 616 (finding that banner displays using the words "labor dispute" was not a signal to employees to cease work). The evidence must also prove that the object of the conduct is to compel the secondary employer to cease doing business with the primary employer. "Unless both of those elements are demonstrated, no violation of the Act may be found." Id. at 615.

The Board in *Eliason* and *New Star* found that "nothing about the banner displays or any extrinsic evidence indicates any prearranged or generally understood signal by union representatives to employees of the secondary employers or any other employees to cease work." *New Star*, supra at 615. In both cases, the Board noted the lack of evidence that the unions requested or otherwise sought "to induce or encourage a work stoppage or refusal to handle goods or perform services" and the lack of any evidence of a work stoppage. *Eliason*, supra at 805, fn. 28; *New Star*, supra at 615–616. The Board reasoned that signal picketing "cannot include all activity conveying a 'do not patronize' message directed at the public simply because the message might reach, and send a signal to, unionized employees.' *Eliason*, supra at 805 (citing *Overstreet v. Carpenters Local 1506*, 409 F.3d 1199, 1215 (9th Cir. 2005).

In *New Star*, the Board in evaluating whether a banner display was intended to induce employees of the secondary to cease work considered the lack of evidence showing that the display's presence was timed in coordination with employee start times or that those accompanying the banner conversed with employees other than to distribute handbills. The Board also noted that while one of the displays was as close as 10–15 feet from the entrance for the secondary's employees, it was facing a busy public street, and therefore, not "de facto directed

only at neutral employees." Supra at 617 (distinguishing *Warshawsky & Co. v. NLRB*, 182 F.3d 948, 953 (D.C. Cir. 1999).

The Board in *New Star* reiterated that legitimate purposes for such displays exist by noting that:

> A union may lawfully appeal to those "consumers" of a primary construction employer's services to cease doing business with the primary employer so long as the appeal is not backed by any coercion forbidden by Section 8(b)(4)(ii). See *Eliason*, 355 NLRB 811, supra, at 814, citing *Edward DeBartolo Corp. v. Florida Gulf Coast Building Trades Council*, 485 U.S. 568, 579 (1988). In fact, the Unions here appealed to the secondary employers via letter to do exactly that prior to the commencement of the banner displays. Finally, a union may want to communicate with employees of secondary employers about a labor dispute for many reasons other than to induce them to stop work. Educating the employees of the secondary employers, particularly those who are union members, about the dispute may cause them to speak with the managers of the primary employer and urge them to respect area standards or to talk with the employees of the primary employer, express their solidarity, and encourage them to seek to improve their wages and other terms of employment. . . . Among all these lawful messages the Unions sent by protesting substandard wages at the construction sites, we do not find, without any further evidence, that employees of secondary employers on the site would reasonably understand the protest to be implicitly sending the message forbidden by Section 8(b)(4)(i)(B). Supra, at 617–618.

Ultimately, the Board in *Eliason* and *New Star* found insufficient evidence that the displays constituted signal picketing considering the manner the displays were conducted, the lack of a coercive element to the displays, the speech conveyed, and the lack of evidence that the conduct had been established as a signal to cease work. Id.

Application of Section 8(b)(4) Precedent

1. Displays involving banners and inflatable rats in the absence of picketing at Greenscape Homes, Provencal Construction, Ross Builders, and Andy's Frozen Custards

As discussed above, Respondent's conduct at the offices of Greenscape Homes, Provencal Construction, Ross Builders, and at various Andy's Frozen Custards shops, involved the display of a banner, usually accompanied by an inflatable rat and a yard sign encouraging the public to follow Scabby on social media. In some cases, a rat patrol vehicle was parked nearby. At some locations, in lieu of the banner and inflatable rat display, Respondent parked a mobile billboard containing the same message as the banners in the vicinity of one of the secondary employers. The record contains no evidence of additional conduct such as periodic ambulatory picketing by Respondent at these locations. General Counsel asserts and Respondent does not dispute that these entities are secondary employers with which Respondent had no primary labor dispute. Upon review of the factors considered by the Board's holdings in *Eliason and Brandon II*, I find that these displays were not tantamount to picketing or otherwise coercive conduct in violation of Section 8(b)(4)(ii)(B) of the Act.

Similar to the Board's findings in *Eliason* and *Brandon II*, I find that the banners, mobile billboard, inflatable rats, and yard signs expressed messages that constitute speech. The banners informed readers of Local 150's opinion that the employer named on the banner contracted with a "rat," which in this context is an employer with which a union has a labor dispute.[28] The inflatable rat draws attention to the banner, and it emphasizes Respondent's message that the contracted employer is a rat, and by extension, so is the secondary employer for harboring the primary employer. The yard sign provided social media access information so that interested parties could learn more about Respondent's activities. Respondent posted these displays in the public right-of-way facing the street where all who passed could read the banners. I find that Respondent's banners conveyed a less ambiguous message with regards to its dispute with the secondary employer than the banners in *Eliason*, which required an inference to decipher why the union was requesting that the secondary employer be boycotted. Supra at 798. While Respondent's message was briefer and lacked the specifics of most handbills, Respondent's displays clearly convey a message like the Board found in *Eliason* and *Brandon II*. Here, neither the language of the banner nor the entire display specifically asked those who viewed it to take any action. Customers, suppliers, and employees were left to their own decisions on how to react to the information.

In *Eliason*, the Board found that a stationary banner displayed relatively close to a secondary employer's entrance, not blocking ingress or egress, positioned to be viewed by the general public, and accompanied by several union agents distributing handbills does not threaten, coerce, or restrain reasonable individuals from engaging with the secondary employer. Supra at 802–803. The Board noted that the union agents did not chant, yell, march, patrol or engage in any other type of confrontational activity. The Board in *Brandon II* similarly considered the circumstances around a union displaying a large inflatable rat with an individual holding up a flyer for those entering and exiting to see and concluded that the presence of the inflatable rat, under the circumstances, would not threaten, coerce, or restrain a reasonable person from engaging with the secondary. Supra at 1292.

Upon review of the circumstances around the displays at the locations listed above, I find no evidence that Respondent engaged in conduct that would cause a reasonable person to feel threatened, coerced, or restrained from engaging with the secondary employer. Respondent's conduct did not involve the characteristics of traditional picketing or other conduct that the Board considered in *Eliason* and *Brandon II* as coercive. Respondent did not patrol, carry picket signs, block ingress or egress, gather in large groups, enter a secondary's premise,

[28] Various meanings have been assigned to unions' use of a rat caricature or the word "rat," which refer to some sort of labor dispute between a union and an employer or certain employees. In *Eliason and Knuth*, the union's handbill defined a rat as "a contractor that does not pay all of its employees prevailing wages" or benefits. Supra at 1141. See also, *Marquis Elevator Co.*, 217 NLRB 461 fn. 2 (1975). (finding the term "rat" means to "go nonunion."); *Occidental Chemical Corp.*, 294 NLRB 623, 636 fn. 24 (1989) (finding that a "rat" is a synonym for strike replacement workers, who are often referred to as "scabs.")

disrupt or block work, chant, or otherwise disturb the secondaries' work. Even the "mobile" billboard and rat patrol vehicles are pictured and described in the record as stationary while present. The individuals assigned to monitor the displays sat or stood near the display or sat in a nearby vehicle. The record reflects that the monitors generally did not engage passersby save a few brief responses when others initiated the interaction. Thus, I find insufficient evidence of the type of conduct that the Board considered in *Eliason* and *Brandon II* when assessing whether the circumstances would cause a reasonable person to be threatened, coerced, or restrained from engaging in commerce or reporting to work with the secondary employer.

General Counsel and Charging Parties emphasize how large the inflatable rats are in support of their argument that they are coercive. The banners and inflatable rats used by Local 150 were smaller than those used by the unions in *Eliason* and *Brandon II*, precluding any argument that their size made them more intimidating. The most significant difference between Local 150's displays and those in *Eliason* and *Brandon II* is that Local 150 utilized a banner and an inflatable rat positioned together in most of its displays. Also, it was not uncommon for a rat patrol vehicle to be parked nearby.

As mentioned above, General Counsel and Charging Parties contend that all such banner and inflatable rat displays are tantamount to coercive conduct like picketing and are proscribed by the Act. Therefore, they provided no argument that the manner which Respondent's displays differed from what was considered in *Eliason* and *Brandon II* distinguishes them factually, and therefore, the holdings in those cases do not apply to the circumstances of this case. In considering the circumstances that distinguish the displays at the locations discussed here from those in *Eliason* and *Brandon II*, I find no rationale that supports a conclusion that the banner and inflatable rat displays in this context were more coercive or that they created "a physical, or at least, symbolic confrontation." *Eliason*, supra at 802. Respondent's stationary displays did not create any form of confrontation from which the members of the public could not simply "avert [their] eyes." Id. at 803 (citing *Overstreet v. Carpenters Local 1506*, 409 F.3d 1199, 1214 (9th Cir. 2005)).

Even if some individuals in response to Respondent's message decided to refrain from engaging in commerce with a secondary employer, or a secondary employer changed its conduct through concern that some individuals may decide to refrain from engaging with the employer, such decisions are not the result of unlawful coercion but personal choice based upon information communicated by Respondent's message. *DeBartolo*, supra at 579; *New Star*, supra at 617; *Eliason*, supra at 802–803.

Furthermore, I do not find that the picketing conduct at other locations converted these lawful displays into unlawful picketing. As the Board has noted in many contexts, one illegal action does not make another legal action illegal. For example, illegal statements during captive audience speeches do not convert legal statements made during the same speech to illegal statements. See *Orange County Publications*, 334 NLRB 350 (2001). Similarly, lawful handbilling before and after unlawful picketing in the same location is not necessarily converted to unlawful conduct. *CDG, Inc.*, 305 NLRB at 304–305. In *CDG, Inc.*, picketing the secondary was found illegal, but handbilling was not. The Board in *Held Properties I* distinguished the facts of that case from situations where union's nonpicketing conduct was found to be an attempt to usurp the time limits on recognitional picketing provided by Section 8(b)(7) of the Act. For example, handbilling after the 30-day time limit in Section 8(b)(7) where the handbilling is directed at the primary's employees and not the secondary's involvement with the primary has been found illegal. *Held Properties I*, supra at 22. Under such circumstances, the Board has found that the union was continuing its pleas to the primary employers' employees to withhold their labor until the primary recognized the union.

The facts here are distinguishable. Respondent initiated its banner and inflatable rat displays shortly after it started picketing at other locations and well before the 30-day limit on recognitional picketing expired. Therefore, the displays were not simply a veiled attempt to extend the effects of picketing on Donegal beyond the 30-day limit by being initiated only after that date. The fact that Respondent moved its displays to different secondary locations does not require a different result. The message of the banner was not directed at Donegal employees, and the record contains no evidence of Donegal employees being at these locations, aside from one Donegal employee visiting an Andy's shop as a customer. Respondent had other disputes with Donegal including pending unfair labor practices. While I found that Respondent picketed Donegal at other locations with a recognitional or representational object for more than 30 days, I do not find that unlawful conduct precludes Respondent from engaging in other lawful conduct.

Accordingly, I find that Respondent's displays involving banners, inflatable rats, rat patrol vehicles, yard signs, and/or mobile billboards at the offices of Greenscape Homes, Provencal Construction, Ross Builders, and at various Andy's Frozen Custard shops did not violate Section 8(b)(4)(ii)(B) or constitute a continuing violation of Section 8(b)(7)(C).

General Counsel also alleges that the displays violated Section 8(b)(4)(i)(B) by contending that the banner and inflatable rat displays constituted picketing or "signal picketing," suggesting that Respondent was attempting to induce employees to withhold their services from Greenscape Homes, Provencal Construction, Ross Builders, and Andy's Frozen Custards. As discussed above, Respondent displays at these locations did not constitute traditional picketing or other coercive conduct that would have induced employees to withhold their labor or services to these secondary employers.

I also find insufficient evidence that Respondent engaged in "signal picketing" in violation of Section 8(b)(4)(i)(B) at these locations. The record contains no information about whether any of the construction employees of Greenscape Homes, Provencal Construction, and Ross Builders ever frequented these companies' offices, nor is there any information about other types of employees that work in these offices. Ross testified about his concerns for the display's effects on other tenants in the building and customers, but never mentioned the presence of any of Ross Builders' employees. I find it a reasonable assumption that Andy's shops employ service employees and receive periodic deliveries of product and supplies, but the record contains no information about when these employees

report to work or when deliveries are made. The record does not contain evidence that Respondent timed the displays in coordination with the times that employees would report to work or make deliveries. In each case, the displays were erected facing public streets and not the entrance to the entities. Furthermore, there is no evidence that Respondent communicated with any employees to establish the displays as a signal to cease work. Thus, I find insufficient evidence that the displays induced or encouraged secondary employees to withhold their labor.

Nor do I find that the displays at these locations were a signal to other employees to withhold their services. Other than the UPS driver(s),[29] who occasionally deliver to Ross Builders, the record contains no direct evidence about employees performing work at these facilities and no other evidence of unionized employees being at any of these locations.[30] Nothing in the timing, location, or manner of the displays evidences that they were established as a signal to delivery drivers or other third-party employees.

One UPS delivery driver expressed his unwillingness to cross a "picket line" to deliver to Ross Builders because of the display. The driver was informed that Local 150 had not established a picket line and was not asking any employee to withhold their services. The Board noted in *Carpenters Local 1827 (UPS, Inc.),* 357 NLRB 415, 417 (20 11), that two consumers and one secondary employer characterizing activity as picketing does not make it picketing. The Board went on to note that "[a]s we recently reaffirmed in *Sheet Metal Workers Local 15 (Brandon Regional Medical Center)*, 356 NLRB 1290, 1292 (2011), even when agents of the union engaged in the activity themselves characterize it as "picketing," "the 'mere utterance of that word' in circumstances, as here, which show that the Union's conduct was bereft of any confrontational element, 'cannot transform' what is not picketing 'into picketing.'" *UPS, Inc.*, supra at 417, citing *Teamsters Local 688 (Levitz Furniture)*, 205 NLRB 1131, 1133 (1973) (rejecting, as proof of picketing, union handbillers' statements to a company official that they were picketing).

Here, after being assured that the display was not picketing or a request for employees to withhold services, the driver proceeded to make the delivery and a subsequent delivery was made without incident. The infrequency of such deliveries and lack of evidence of other employee presence does not support a finding that the displays were a signal to employees to cease work or to refuse to provide services or goods to these secondary employers in violation of Section 8(b)(4)(i)(B).

Based upon the foregoing, I find that Respondent did not violate Section 8(b)(4)(i)(ii)(B) or 8(b)(7)(C) by its banner and inflatable rat displays at the offices of Greenscape Homes, Provencal Construction, Ross Builders, and at Andy's Frozen Custards shops.

[29] The record speaks of three deliveries to Ross Builders but is unclear as to whether one or more drivers made those deliveries.

[30] While the record does not establish that UPS delivery drivers are unionized, I take judicial notice that prior Board decisions evidence that they have been unionized for numerous years. See *United Parcel Service*, 340 NLRB 776, 780 (2003); *United Parcel Service*, 234 NLRB 223, 225 (1978).

2. Displays involving banners and inflatable rats in the presence of picketing and other conduct at Boughton Materials

Respondent does not dispute that Boughton Materials is a secondary employer. The evidence establishes that Respondent displayed a banner and inflatable rat in the public right-of-way beside the entrance to Boughton Materials each day from approximately July 11–20. Typically, two agents of Respondent, a yard sign, and a rat mobile accompanied the display at Boughton Materials. Respondent's agents also testified that they engaged in ambulatory picketing of Donegal[31] at Boughton Materials.

Boughton Materials is signatory to a collective-bargaining agreement with Respondent that precludes sympathy strikes by its unit employees except in the case of area standards picketing. As is Respondent's practice and as Boughton admitted that he preferred, Deliberto called Boughton the night before the ambulatory picketing of Donegal started. Deliberto explained that they were going to be picketing Donegal and that Boughton could exercise his managerial discretion about how to respond. The next morning Boughton intercepted Deliberto near the facility scale house. Deliberto told Boughton that they were going after Donegal and asked Boughton to support their strike which Boughton refused to do. Boughton directed Deliberto to picket outside of the Boughton Material's facility and Deliberto complied.

I note that the amended consolidated complaint and General Counsel's brief does not allege that Deliberto's call to Boughton or that the one-on-one exchange between Deliberto and Boughton the next morning violated the Act. In these interactions Deliberto told Boughton that Donegal not Boughton Materials was the target of the picketing as Respondent's picket signs stated.

Instead, General Counsel contends that the conversation between Deliberto and Boughton corroborates Bradley's testimony that Respondent's agents directed Boughton employees to not load Donegal trucks. For the reasons discussed above, I find the assertion that Boughton and Bradley were testifying about the same situation implausible given the evidence. I further found that Bradley's account of Respondent's agents directing Boughton employees not to load Donegal trucks unreliable. Bradley claimed that he went to Boughton Materials because he was contacted by some unnamed driver about whether Boughton Materials would load them. Bradley claimed that this interaction was within days of the onset of picketing but that is inconsistent with Boughton's and Maly's testimony that there was no refusal to load Donegal trucks for more than a week after the strike started. Bradley failed to identify anyone involved, including his own truckdrivers. Thus, I find insufficient reliable evidence that Respondent vio-

[31] There is no allegation in the amended consolidated complaint that Respondent engaged in primary picketing in the absence of Donegal's presence. "The criteria established in Moore Dry Dock Co., 92 NLRB 547 (1950), to delineate primary from secondary picketing requires, inter alia, that picketing be conducted only when the primary employer is present at the jobsite." *Sheet Metal Workers Local 80 (Ciamillo Heating),* 268 NLRB 4, 6 (1983).

lated the Act by demanding or directing Boughton Material employees to withhold goods or services to Donegal as alleged in the amended consolidated complaint.

General Counsel does not allege that Respondent's ambulatory picketing of Donegal at Boughton Materials through July 20 violated the Act. General Counsel only alleges that the daily maintenance of the banner and inflatable rat during that time frame was a violation. As discussed above, I find nothing in Respondent's banner and inflatable rat displays that make them alone any more coercive than the displays in *Eliason* and *Brandon II*. Thus, the question here is whether the periodic lawful picketing that occurred in proximity to the displays increased the coercive effect of the displays.

Here like in *Held Properties I*, the picket signs identified the primary employer, while the banners named the secondary employer, and there is no evidence that employees ceased work. But in *Held Properties I*, the lawful area standards picketing of the primary ceased before the bannering of the secondary occurred. Here, Respondent repeatedly picketed in proximity to the banner and inflatable rat displays. The general public and Boughton Materials' employees, and customers, many of which are repeat customers, witnessed Boughton Materials' name on a banner calling it a rat in the presence of an inflatable rat and periodic picketing. I find that a reasonable person is likely to conflate the picketing and the banner and inflatable rat display as being part and parcel of the same conduct, and therefore, see the banner and inflatable rat display as part of the picketing and a continuation of the picketing conduct even when the picketers were not present.

I recognize that it is an odd result that two separately legal forms of activity can become illegal simply because they occur simultaneously in the same location. Yet, I find that is the proper result under the circumstances here. Despite the separate signage, a reasonable conclusion for those that witnessed the picketing activity in proximity to the banner and inflatable rat display is that it is all part of the same conduct, and therefore, the picketing was also directed at Boughton Materials. As a result of the totality of the circumstances, Respondent's conduct was coercive to a reasonable person attempting to do business with Boughton Materials, a secondary employer. Respondent's objective was to get Boughton Materials to cease doing business with Donegal, which is evidenced by Respondent's requests to Boughton to exercise his managerial discretion. While Respondent is privileged to ask for support for its picketing of Donegal, Section 8(b)(4)(ii)(B) of the Act prohibits threatening, coercing or restraining any person in order to garner that support and Section 8(b)(4)(i)(B) prohibits using such conduct to induce or encourage employees to withhold their labor or services from Boughton Materials. I find that the banner and inflatable rat displays in proximity to the repeated ambulatory picketing were coercive to a reasonable person attempting to engage in commerce with Boughton Materials and induced or encouraged employees to withhold their labor or services from Boughton Materials.[32] Therefore, I find Respondent's banner and rat displays in combination with its concurrent picketing of Donegal at Boughton Materials violated Section 8(b)(4)(i)(ii)(B) of the Act.[33]

General Counsel also alleges that Respondent violated Section 8(b)(i)(ii)(B) by Deliberto's voice mail message to Maly in September. Taken in the most favorable light to Respondent, Deliberto's voice mail message can be interpreted to mean that Respondent planned on picketing RSS as an ally of Donegal and not Boughton Materials. In Maly's experience, Respondent's picketing of Donegal involved a simultaneous banner and inflatable rat display identifying Boughton Materials. As discussed above, I find the totality of such conduct unlawfully coercive. Also, any resumption of picketing of Donegal or its allies after August 10 would have had the added coercive effect of being a violation of Section 8(b)(7)(C) as found above. While Deliberto's message did not state that a banner and inflatable rat display directed at Boughton Materials would accompany the possible picketing, a reasonable person in Maly's shoes would make this conclusion based upon Respondent's past activity. The object of Respondent telling Boughton that picketing may reoccur was to request that Boughton Materials cease doing business with RSS because it was an ally of Donegal. That request was accompanied by unlawful coercion. Thus, I find that Deliberto's voice mail message constituted a coercive threat to unlawfully enmesh Boughton Materials in Respondent's primary labor dispute with Donegal in violation of Section 8(b)(4)(ii)(B) of the Act.[34]

3. Displays with and without picketing at Elmhurst-Chicago Stone

Respondent does not dispute that Elmhurst-Chicago Stone is a secondary employer. Respondent engaged in ambulatory picketing of Donegal while a banner naming Elmhurst-Chicago Stone and an inflatable rat were displayed outside of the entrance of one of its facilities. While the record is unclear where exactly the picketing occurred in relation to the display, I can only assume that those coming and going from the landfill witnessed both when the picketers were present. The ambulatory picketing continued at this location beyond the 30-day limit for recognitional picketing, which had the added coercive effect of being unlawful picketing. Therefore, for the reasons discussed above, I find Respondent's banner and inflatable rat display outside the entrance to the Elmhurst-Chicago Stone landfill facility in Bolingbrook, Illinois in the presence of repeated picketing of the primary employer violated Section 8(b)(4)(i)(ii)(B) of the Act. Because this conduct occurred in the presence of picketing more than 30 days after the initiation of picketing with, in part, a recognitional or organizational

[32] I further note that Sec. 8(b)(4)(i)(ii)(B) specifically states, "That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing." I do not find here that Respondent's ambulatory picketing of Donegal was unlawful at Boughton materials, but that its banner and inflatable rat display naming Boughton Materials in the presence of picketing that unlawfully enmeshed Boughton Materials in Respondent's dispute with Donegal.

[33] Respondent ceased displaying a banner and inflatable rat at Boughton Materials less than 30 days after it began picketing.

[34] I find no evidence that Deliberto's voice mail message was heard by anyone other than Maly; therefore, I do not find that it violated Section 8(b)(4)(i)(B) of the Act.

object, it combined with the picketing violated Section 8(b)(7)(C) of the Act.

Based upon my analysis above of banner and inflatable rat displays in the absence of picketing conduct, I further find that Respondent's banner and inflatable rat at Elmhurst-Chicago Stone's batch plant facility in Elmhurst, Illinois in the absence of any evidence of picketing at this location, did not violate Section 8(b)(4)(i)(ii)(B) or 8(b)(7)(C) of the Act.

4. Statement Made While Picketing at Settler's Hill

As discussed above, I credit Opatkiewicz' testimony about the events at Settler's Hill. Mix entered the facility and the landfill employee checked for contaminants. Then the landfill employee went into the trailer. Mix pulled his truck over and waited for a few minutes before he went up the hill in the landfill and dumped his load. Opatkiewicz followed Mix. As Mix was leaving the landfill employee waived him down and asked where he had gone. Opatkiewicz, who had exited his vehicle with a picket sign stating that Respondent was on strike against Donegal for unfair labor practices, then volunteered, "Why don't you reload him?" General Counsel asserts that even if I credit this version of the events it is still a violation of Section 8(b)(4)(i)(ii)(B) of the Act for Opatkiewicz to ask, "Why don't you reload him?" while holding the picket sign against Donegal. (GC Brief at 30.)

I agree with General Counsel that Opatkiewicz' subjective thoughts about the situation are not controlling. (GC Brief at 30.) The standard for review is whether reasonable employees standing in the Settler's Hill employee's shoes would be unlawfully induced or encouraged to cease performing work or to withhold services because of Opatkiewicz' conduct, and that the conduct had an unlawful motive of encouraging Settler's Hill to cease doing business with Donegal. "Unless both of those elements are demonstrated, no violation of the Act may be found." *New Star*, 356 NLRB at 615. I note that this incident occurred in late July or early August within the first 30 days of Respondent's picketing of Donegal. Therefore, Opatkiewicz was not engaging in unlawful recognitional picketing of Donegal at that time. In this situation, the employee tested Mix's load for contaminants in the presence of Opatkiewicz with no encouragement by Opatkiewicz to turn Mix away. Opatkiewicz' comment came after the landfill employee was already concerned with Mix's conduct. I find that a reasonable employee would contribute Opatkiewicz' comment to Mix's conduct and not Respondent's dispute with Donegal. Under the circumstances, Opatkiewicz' comment encouraged the landfill employee to do his job, not the opposite. Accordingly, I find that Respondent did not violate Section 8(b)(4)(i)(ii)(B) of the Act by Opatkiewicz' comment to the Settler's Hill employee.

CONCLUSIONS OF LAW

1. International Union of Operating Engineers, Local 150, AFL–CIO (Respondent) is a labor organization within the meaning of Section 2(5) of the Act.

2. Donegal Services, LLC (Donegal)is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Ross Builders, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. By picketing Donegal Services, LLC for more than 30 days with, at least in part, a recognitional or organizational motive, Respondent violated Section 8(b)(7)(C) of the Act.

5. By displaying a banner, which named Boughton Materials, and an inflatable rat in the presence of repeated picketing of Donegal at the entrance to the Boughton Materials' facility in furtherance of its objective to cause Boughton Materials to cease doing business with Donegal and, to in part, force or require Donegal to recognize or bargain with Respondent as the representative of Donegal's employees, even though Respondent has not been certified as the representative of the employees under Section 9 of the Act, Respondent violated Section 8(b)(4)(ii)(B) of the Act.

6. By displaying a banner, which named Boughton Materials, and an inflatable rat in the presence of repeated picketing of Donegal at the entrance to the Boughton Materials' facility, Respondent unlawfully induced and encouraged employees to strike, refuse to handle or work on goods and/or refuse to perform services in furtherance of its objective to cause Boughton Materials to cease doing business with Donegal and, to in part, force or require Donegal to recognize or bargain with Respondent as the representative of Donegal's employees, even though Respondent has not been certified as the representative of the employees under Section 9 of the Act, in violation of Section 8(b)(4)(i)(B) of the Act.

7. By threatening to unlawfully enmesh Boughton Materials, a secondary, in its picketing conduct against Donegal with which Respondent had a primary labor dispute in violation of Section 8(b)(4)(ii)(B) of the Act.

8. By displaying a banner, which named Elmhurst-Chicago Stone, and an inflatable rat in the presence of repeated picketing conduct against Donegal at the entrance to the Elmhurst-Chicago Stone's Bolingbrook, Illinois facility in furtherance of its objective to cause Elmhurst-Chicago Stone to cease doing business with Donegal and, to in part, force or require Donegal to recognize or bargain with Respondent as the representative of Donegal's employees, even though Respondent has not been certified as the representative of the employees under Section 9 of the Act, Respondent violated Section 8(b)(4)(ii)(B) and 8(b)(7)(C) of the Act.

9. By displaying a banner, which named Elmhurst-Chicago Stone, and an inflatable rat in the presence of repeated picketing conduct against Donegal at the entrance to the Elmhurst-Chicago Stone's Bolingbrook, Illinois facility, Respondent induced and encouraged employees to strike, refuse to handle or work on goods and/or refuse to perform services in furtherance of its objective to cause Elmhurst-Chicago Stone to cease doing business with Donegal and, to in part, force or require Donegal to recognize or bargain with Respondent as the representative of Donegal's employees, even though Respondent has not been certified as the representative of the employees under Section 9 of the Act, in violation of Section 8(b)(4)(i)(B) of the Act.

10. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

11. Respondent has not otherwise violated the Act.

On these findings of fact and conclusions of law and on the

entire record, I issue the following recommended[35]

ORDER

The Respondent International Union of Operating Engineers, Local 150, AFL–CIO, Countryside, Illinois, its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Picketing Donegal for more than 30 days, at least in part, to force Donegal to recognize or bargain with Respondent as the bargaining representative of its employees even though Respondent has not been certified as the representative of the employees under Section 9(a) of the Act.

(b) Picketing Donegal while displaying a banner, which names Boughton Materials, in the presence of an inflatable rat in front of Boughton Materials' facility in furtherance of its objective to force Boughton Materials to cease doing business with Donegal and, in part, to force Donegal to recognize or bargain with Respondent as the bargaining representative of its employees even though Respondent has not been certified as the representative of the employees under Section 9(a) of the Act.

(c) Picketing Donegal while displaying a banner, which names Boughton Materials, in the presence of an inflatable rat in front of Boughton Materials' facility to induce or encourage employees to strike, refuse to handle or work on goods and/or refuse to perform services in furtherance of its objective to force Boughton Materials to cease doing business with Donegal and, in part, to force Donegal to recognize or bargain with Respondent as the bargaining representative of its employees even though Respondent has not been certified as the representative of the employees under Section 9(a) of the Act.

(d) Threatening to unlawfully enmesh Boughton Materials, a secondary, in its picketing conduct against Donegal with which Respondent had a primary labor dispute in furtherance of its objective to force Boughton Materials to cease doing business with Donegal and, in part, to force Donegal to recognize or bargain with it as the bargaining representative of its employees even though Respondent has not been certified as the representative of the employees under Section 9(a) of the Act.

(e) Picketing Donegal while displaying a banner, which names Elmhurst-Chicago Stone, in the presence of an inflatable rat in front of Elmhurst-Chicago Stone's Bolingbrook, Illinois facility in furtherance of its objective to force Elmhurst-Chicago Stone to cease doing business with Donegal and, in part, to force Donegal to recognize or bargain with Respondent as the bargaining representative of its employees even though Respondent has not been certified as the representative of the employees under Section 9(a) of the Act.

(f) Picketing Donegal while displaying a banner, which names Elmhurst-Chicago Stone, in the presence of an inflatable rat in front of Elmhurst-Chicago Stone's Bolingbrook, Illinois facility to induce or encourage employees to strike, refuse to handle or work on goods and/or refuse to perform services in furtherance of its objective to force Elmhurst-Chicago Stone to cease doing business with Donegal and, in part, to force Donegal to recognize or bargain with Respondent as the bargaining representative of its employees even though Respondent has not been certified as the representative of the employees under Section 9(a) of the Act.

(g) In any like or related manner violating Section 8(b)(4)(i)(ii)(B) and 8(b)(7(C) of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its business offices and meeting places copies of the attached notice marked as "Appendix".[36] Copies of the notice, on forms provided by the Regional Director of Region 4, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with members by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn statement of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

(c) Within 14 days after service by the Region, sign and return to the Regional Director sufficient copies of the notices for posting by Boughton Materials and Elmhurst-Chicago Stone, if they are willing, at all places where their notices to the public and patrons customarily are posted.

IT IS FURTHER ORDERED that the amended consolidated complaint is dismissed in so far as it alleges violations of the Act not specifically found herein.

Dated, Washington, D.C. December 13, 2019

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

WE WILL NOT picket Donegal for more than 30 days, at least in part, to force Donegal to recognize or bargain with us as the bargaining representative of its employees even though we have not been certified as the representative of the employees

[35] If no exceptions are filed as provided by Sec. 102.48 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[36] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

under Section 9(a) of the Act.

WE WILL NOT picket Donegal while displaying a banner, which names Boughton Materials, in the presence of an inflatable rat in front of Bought Materials' facility in furtherance of our objective to force Boughton Materials to cease doing business with Donegal and, in part, to force Donegal to recognize or bargain with us as the bargaining representative of its employees.

WE WILL NOT picket Donegal while displaying a banner, which names Boughton Materials, in the presence of an inflatable rat in front of Bought Materials' facility to induce or encourage employees to strike, refuse to handle or work on goods and/or refuse to perform services in furtherance of our objective to force Boughton Materials to cease doing business with Donegal and, in part, to force Donegal to recognize or bargain with us as the bargaining representative of its employees.

WE WILL NOT unlawfully threaten to enmesh Boughton Materials, a secondary, in our picketing conduct against Donegal in furtherance of our objective to force Boughton Materials to cease doing business with Donegal and, in part, to force Donegal to recognize or bargain with us as the bargaining representative of its employees.

WE WILL NOT picket Donegal while displaying a banner, which names Elmhurst-Chicago Stone, in the presence of an inflatable rat in front of Elmhurst-Chicago Stone's Bolingbrook, Illinois facility in furtherance of our objective to force Elmhurst-Chicago Stone to cease doing business with Donegal and, in part, to force Donegal to recognize or bargain with us as the bargaining representative of its employees.

WE WILL NOT picket Donegal while displaying a banner, which names Elmhurst-Chicago Stone, in the presence of an inflatable rat in front of Elmhurst-Chicago Stone's Bolingbrook, Illinois facility to induce or encourage employees to strike, refuse to handle or work on goods and/or refuse to perform services in furtherance of our objective to force Elmhurst-Chicago Stone to cease doing business with Donegal and, in part, to force Donegal to recognize or bargain with us as the bargaining representative of its employees.

WE WILL NOT, in any like or related manner, violate Section 8(b)(4)(i)(ii)(B) or 8(b)(7)(C) of the Act.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO (UNION)

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/13-CP-227526 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.